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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 83

PARAMOUNT FAMOUS LASKEY CORPORATION, METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION, FIRST NATIONAL PICTURES, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED APRIL 16, 1930

(34,951)

(34,951)

SUPREME COURT OF THE UNITED STATES

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VOL. I

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SOUTHERN DISTRICT OF NEW YORK IN UNITED STATES DISTRICT COURT

In Equity. No. 45100

UNITED STATES OF AMERICA, Petitioner,

v.

PARAMOUNT FAMOUS LASKY CORPORATION et al., Defendants

PETITION

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

I

Parties

The United States of America by Charles H. Tuttle, United States Attorney for the Southern District of New York, acting under the direction of the Attorney General, brings this proceeding in equity against:

Defendant Distributors

1. Paramount Famous Lasky Corporation, a corporation organized under the laws of the State of New York, and having its principal office at 1501 Broadway, New York, New York;

2. Metro-Goldwyn-Mayer Distributing Corporation, a corporation organized under the laws of the State of New [fol. 5] York, and having its principal office at 1540 Broadway, New York, New York;

3. First National Pictures, Inc., a corporation organized under the laws of the State of Delaware, and having its principal office at 383 Madison Avenue, New York, Nw York;

4. Universal Film Exchanges, Inc., a corporation organized under the laws of the State of Delaware, and having its principal office at 730 Fifth Avenue, New York, New York;

5. United Artists Corporation, a corporation organized under the laws of the State of Delaware, and having its principal office at 729 7th Avenue, New York, New York;

6. Fox Film Corporation, a corporation organized under the laws of the State of New York, and having its principal office at 850 Tenth Avenue, New York, New York;

7. Pathe Exchange, Inc., a corporation organized under the laws of the State of New York, and having its principal office at 35 West 45th Street, New York, New York;

8. F. B. O. Pictures Corporation, a corporation organized under the laws of the State of Delaware, and having its principal office at 1560 Broadway, New York, New York;

9. Vitagraph, Inc., a corporation organized under the laws of the State of New York, and having its principal office at 321 West 44th Street, New York, New York; and

[fol. 6] 10. Educational Film Exchanges, Inc., a corporation organized under the laws of the State of New York, and having its principal office at 1501 Broadway, New York, New York;

Against:

Defendant Association

Motion Picture Producers and Distributors of America, Inc., hereinafter referred to as the defendant association, a membership corporation organized under the laws of the State of New York, having its principal office and place of business at 469 Fifth Avenue, New York, New York, and having a Class B membership composed of the aforesaid corporations (also made defendants hereto) each of which is engaged in the business of distributing motion picture films, which said corporations collectively are referred to hereinafter as the defendant distributors. Said distribution of motion picture films by said defendant distributors is done directly through branch offices maintained and operated by said defendant distributors or through wholly owned and controlled subsidiary corporations organized and operated by some of said defendant distributors to carry on such distribution for them in certain States of the United

States. The number of said subsidiary corporations is so large as to make it impracticable to set forth in this petition the name of each and the State in which each operates. Each said subsidiary distributing corporation not having substantially the same name as the defendant distributor [fol. 7] by which it is owned, controlled, and operated, is specifically designated in the following list of members of defendant Film Board of Trade.

Defendant Film Boards of Trade

And against the hereinafter named Film Boards of Trade; (also made defendants hereto) each of which, unless otherwise specified hereinafter, is an unincorporated association organized and maintained by said defendant distributors, and by the other hereinafter named distributors of motion-picture films, and each of which has a membership composed of the branch managers (generally designated and therefore referred to hereinafter as exchange managers) of all said defendant distributors and of all or practically all other distributors of motion-picture films in the States wherein said Film Boards of Trade are located; and against the officers and members of said defendant Film Boards of Trade. The number of said officers and members of said defendant Film Boards of Trade is so large that it is not practical to set forth their names in this petition. The names and addresses of said Film Boards of Trade, the distributors of motion picture films whose exchange managers constitute the membership of each said Film Board of Trade, and the territory (by states and by portions of states) in which each said Film Board of Trade operates, are as follows, to wit:

1. Film Board of Trade of Albany, having an office at 110 North Pearl Street, Albany, New York, and having a membership composed of the Albany exchange manager [fol. 8] of each defendant distributor except defendant United Artists Corporation and of the Albany exchange manager of Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the northeastern part of the State of New York;

2. Atlanta Film Board of Trade, a corporation organized under the laws of the State of Georgia, having an office

in the One-O-One Building, Atlanta, Georgia, and having a membership composed of the Atlanta exchange manager of each defendant distributor and of the Atlanta exchange managers of Big Feature Rights Corporation, A. C. Bromberg Attractions, Enterprise Film Corporation, Liberty-Specialty Film Distributing Corporation and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the States of Georgia and Florida, in part of the State of Alabama, and in that part of the State of Tennessee which is east of the Tennessee River;

3. New England Film Board of Trade, having an office at 204 Stuart Street, Boston, Massachusetts, and having a membership composed of the Boston exchange manager of each defendant distributor except defendant Universal Film Exchanges, Inc., and of the Boston exchange managers of American Feature Film Company, (distributor for defendant Universal Film Exchanges, Inc.) Consolidated Films, First Division Pictures, Inc., Independent Film Corporation, Motion Picture Corporation, Pictures in Mo- [fol. 9] tion, Inc., Royal Film Exchange, Inc., Supreme Film Corporation, Tiffany-Stahl Productions, Inc., and Royal Film Exchange. Said defendant Film Board operates throughout the States of Massachusetts, Vermont, New Hampshire, Maine, Rhode Island and in part of the State of Connecticut;

4. Buffalo Film Board of Trade, having an office at 374 Delaware Avenue, Buffalo, New York, and having a membership composed of the Buffalo exchange manager of each defendant distributor and of the Buffalo exchange managers of Bond Photoplays Corporation, Chase Pictures Corporation, Dependable Distributing Corporation, First Graphic Exchange, R. C. Pix Exchanges, and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the Northwestern part of the State of New York;

5. Montana Film Board of Trade, having an office in the Pennsylvania Block, Butte, Montana, and having a membership composed of the exchange manager of each defendant distributor and of the exchange managers of Greater Features, Columbia Pictures Corporation, and Western Film Corporation. Said defendant Film Board

operates throughout the State of Montana and in the eastern and northwestern parts of the State of Idaho;

6. Charlotte Film Board of Trade, having an office at 300 West Third Street, Charlotte, North Carolina, and [fol. 10] having a membership composed of the Charlotte exchange manager of each defendant distributor and of the Charlotte exchange managers of A. C. Bromberg Attractions, Eltabran Film Company, Liberty-Specialty Film Distributing Corporation, and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the States of North Carolina and South Carolina;

7. Chicago Film Board of Trade, a corporation organized under the laws of the State of Illinois, having an office at 910 South Michigan Avenue, Chicago, Illinois, and having a membership composed of the Chicago exchange manager of each defendant distributor and of the Chicago exchange managers of Renown Pictures, Inc., Greiver Productions, Columbia Pictures Corporation, Progress Pictures, B. N. Judell, Inc., Security Pictures, Gotham Pictures Exchange, Reel-Craft Film Exchange, Red Seal Pictures and Daily News Screen Service. Said defendant Film Board operates in the State of Illinois, in the northern part of the State of Indiana, in the southern part of the State of Wisconsin and in the northeastern part of the State of Missouri;

8. Cincinnati Film Board of Trade, having an office at 12 East Sixth Street, Cincinnati, Ohio, and having a membership composed of the Cincinnati exchange manager of each defendant distributor and of the Cincinnati exchange managers of Fischer Film Exchange, Skirboll Gold-Seal Productions, Inc., Standard Film Service Company, Tif- [fol. 11] fany-Stahl Productions, Inc., and Big Feature Rights Corporation. Said defendant Film Board operates in the southern part of the State of Ohio, in the State of Kentucky, and in the western part of the State of West Virginia;

9. Cleveland Film Board of Trade, having an office in the Film Exchange Building, Cleveland, Ohio, and having a membership composed of the Cleveland exchange manager of each defendant distributor and of the Cleveland

exchange managers of Standard Film Service Company, Skirball-Gold Seal Productions, Inc., Fischer Film Exchange Company, and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the northern part of the State of Ohio;

10. Dallas Film Board of Trade, having an office at 2009½ Jackson Street, Dallas, Texas, and having a membership composed of the Dallas exchange manager of each defendant distributor and of the Dallas exchange managers of Tiffany-Stahl Productions, Inc., Home State Film Company, and Liberty-Specialty Film Distributing Corporation. Said defendant Film Board operates throughout the State of Texas and in part of the State of Oklahoma;

11. Denver Film Board of Trade, having an office in the Midland Savings Building, Denver, Colorado, and having a membership composed of the Denver exchange manager of each defendant distributor and of the Denver exchange managers of Columbia Pictures Corporation, Atlas [fol. 12] Film Exchange, and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the States of Colorado and New Mexico, in part of the State of Wyoming, in the western part of the State of Nebraska and in the western part of the State of South Dakota;

12. Des Moines Film Board of Trade, having an office in the Iowa Building, Des Moines, Iowa, and having a membership composed of the Des Moines exchange manager of each defendant distributor, except defendants Vitagraph, Inc., and United Artists Corporation, and of the Des Moines exchange manager of Columbia Pictures Corporation. Said defendant Film Board operates throughout the State of Iowa;

13. Detroit Film Board of Trade, Inc., a corporation organized under the laws of the State of Michigan, having an office at 302 Film Exchange Building, Detroit, Michigan, and having a membership composed of the Detroit exchange manager of each defendant distributor and of the Detroit exchange manager of Columbia Pictures Corporation, Crescent Pictures Exchange, Favorite Film Company, Standard Film Service Company, Tiffany-Stahl Produc-

tions, Inc., and W. D. Ward Productions. Said defendant Film Board operates throughout the State of Michigan;

14. Indianapolis Film Board of Trade, a corporation organized under the laws of the State of Indiana, having an office in the Chamber of Commerce Building, Indianapolis, [fol. 13] Indiana, and having a membership composed of the Indianapolis exchange manager of each defendant distributor and of the Indianapolis exchange managers of Big Feature Rights Corporation, Midwest Film Company, Red Seal Film Exchange, Security Pictures, and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the State of Indiana;

15. Kansas City Film Board of Trade, a corporation organized under the laws of the State of Missouri, having an office at 1717 Wyandotte Street, Kansas City, Missouri, and having a membership composed of the Kansas City exchange manager of each defendant distributor and of the Kansas City exchange managers of Enterprise Film Corporation, Tiffany-Stahl Productions, Inc., and Midwest Film Distributors, Inc. Said defendant Film Board operates throughout the State of Kansas and in the western part of the State of Missouri;

16. Los Angeles Film Exchange Board of Trade, a corporation organized under the laws of the State of California, having an office in the Film Exchange Building, Washington & Vermont Streets, Los Angeles, California, and having a membership composed of the Los Angeles exchange manager of each defendant distributor and of the Los Angeles exchange managers of All Star Feature Distributing Corporation, Tiffany-Stahl Productions, Inc., and Columbia Exchanges, Inc. Said defendant Film Board [fol. 14] operates in the southern part of the State of California and throughout the State of Arizona;

17. Milwaukee Film Board of Trade, a corporation organized under the laws of the State of Wisconsin, having an office at 216 West Water Street, Milwaukee, Wisconsin, and having a membership composed of the Milwaukee exchange manager of each defendant distributor and of the Milwaukee exchange managers of Celebrated Players Corporation, Mid-West Distributing Corporation, Red Seal Film Exchange, Progress Pictures Company, Ludwig Film

Exchange, Tiffany-Stahl Productions, Inc., and Columbia Pictures Corporation. Said defendant Film Board operates throughout the State of Wisconsin and in the southeastern part of the State of Minnesota;

18. Memphis-Little Rock Film Board of Trade, having an office at 103 South Second Street, Memphis, Tennessee, and having a membership composed of the Memphis and/or Little Rock exchange manager of each defendant distributor, except defendants United Artists Corporations, Vitagraph, Inc., and Educational Film Exchanges, Inc., and of the Memphis and or Little Rock exchange managers of Big Features Rights Corporation, Home State Film Company and Liberty-Specialty Film Distributing Corporation. Said defendant Film Board operates throughout the States of Tennessee and Arkansas and in the northern part of the State of Mississippi;

[fol. 15.] 19. Minneapolis Film Board of Trade, Inc., a corporation organized under the laws of the State of Minnesota, having an office in the Film Exchange Building, Minneapolis, Minnesota, and having a membership composed of the Minneapolis exchange manager of each defendant distributor and of the Minneapolis exchange managers of Columbia Pictures Corporation, Friedman Film Corporation, Premier Film Exchange and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the States of Minnesota, North Dakota and South Dakota and in the western part of the State of Wisconsin;

20. New Haven Film Board of Trade, having an office at 134 Meadow Street, New Haven Connecticut, and having a membership composed of the New Haven exchange manager of each defendant distributor and of the New Haven exchange managers of Ritz Film Exchange, Independent Films, Inc., and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the State of Connecticut;

21. New Orleans Film Board of Trade, having an office in the New Orleans Bank Building, New Orleans, Louisiana, and having a membership composed of the New Orleans exchange manager of each defendant distributor, ex-

cept defendant United Artists Corporation, and of the New Orleans Exchange managers of A. C. Bromberg Attractions, Enterprise Distributing Corporation, and Lib- [fol. 16] erty-Specialty Film Distributing Corporation. Said defendant Film Board operates throughout the State of Louisiana, in the southern part of the State of Mississippi, in the western part of the State of Alabama, and in the northwestern part of the State of Florida.

22. New York Film Board of Trade, having an office at 1560 Broadway, New York, New York, and having a membership composed of the New York exchange manager of each defendant distributor, except Universal Film Exchanges, Inc., and of the New York Exchange managers of Aywon Film Corporation, Big U Film Exchange, Inc., (subsidiary of defendant Universal Film Exchanges, Inc.) Capital Film Exchange, Inc., Commonwealth Film Corporation, Hollywood Pictures Corporation, Merit Film Corporation, First Division Pictures, Inc., Producers Distributing Corporation, Red Seal Pictures, Inc., and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the southern part of the State of New York and in the northern part of the State of New Jersey;

23. Oklahoma City Film Board of Trade, having an office in the Security Building, Oklahoma City, Oklahoma, and having a membership composed of the Oklahoma City exchange manager of each defendant distributor, except defendant United Artists Corporation, and of the Oklahoma City exchange managers of Home State Film Company and Liberty Specialty Film Distributing Corporation. [fol. 17] Said defendant Film Board operates throughout the State of Oklahoma and in the northern part of the State of Texas;

24. Omaha Film Board of Trade, Inc., a corporation organized under the laws of the State of Nebraska, having an office in the Medical Arts Building, Omaha, Nebraska, and having a membership composed of the Omaha exchange manager of each defendant distributor and of the Omaha exchange managers of Columbia Pictures Corporation, Liberty Film Exchange and Brown Pictures, Inc. Said defendant Film Board operates throughout the State of Nebraska and in the western part of the State of Iowa;

25. Philadelphia Film Board of Trade, having an office at 1337 Vine Street, Philadelphia, Pennsylvania, and having a membership composed of the Philadelphia exchange manager of each defendant distributor and of the Philadelphia exchange managers of Columbia Pictures Corporation, DeLuxe Film Company, Inc., Liberty Film Company, Masterpiece Film Attractions, Penn Productions, Inc., and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the eastern part of the State of Pennsylvania and in the southern part of the State of New Jersey;

26. Pittsburgh Film Board of Trade, having an office at 335 Fifth Avenue, Pittsburgh, Pennsylvania, and having a membership composed of the Pittsburgh exchange man- [fol. 18] ager of each defendant distributor and of the Pittsburgh exchange managers of Columbia Pictures Corporation, Columbia Film Service, Federated Film Exchange and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the western part of the State of Pennsylvania and in the eastern part of the State of West Virginia;

27. Portland Film Board of Trade, having an office in the Board of Trade Building, Portland, Oregon, and having a membership composed of the Portland exchange manager of each defendant distributor and of the Portland exchange managers of Star Film Exchange, Greater Features, Inc., Columbia Pictures Corporation and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the State of Oregon;

28. St. Louis Film Board of Trade, having an office at 3312 Olive Street, St. Louis, Missouri, and having a membership composed of the St. Louis exchange manager of each defendant distributor and of the St. Louis exchange managers of Columbia Pictures Corporation, Gotham Pictures Exchange and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the eastern part of the State of Missouri and in the southern part of the State of Illinois;

29. Inter-Mountain Film Board of Trade of Salt Lake City, Utah, a corporation organized under the laws of the

State of Utah, having an office in the Continental Bank [fol. 19] Building, Salt Lake City, Utah, and having a membership composed of the Salt Lake City exchange manager of each defendant distributor and of the Salt Lake City exchange managers of Columbia Pictures Corporation and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the State of Utah, in the southern part of the State of Idaho and in the western part of the State of Wyoming;

30. San Francisco Film Exchange Board of Trade, a corporation organized under the laws of the State of California, having an office at 25 Taylor Street, San Francisco, California, and having a membership composed of the San Francisco Exchange manager of each defendant distributor and of the San Francisco exchange managers of Columbia Film Exchanges, Inc., and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates in the northern part of the State of California and throughout the State of Nevada;

31. Northwest Film Board of Trade, Incorporated, a corporation organized under the laws of the State of Washington, having an office in the Securities Building, Seattle, Washington, and having a membership composed of the Seattle exchange manager of each defendant distributor and of the Seattle exchange managers of Columbia Film Exchanges, Inc., Tiffany-Stahl Productions, Inc., Greater Features, Inc., and Western Film Corporation. [fol. 20] Said defendant Film Board operates throughout the State of Washington and the Territory of Alaska; and

32. Washington Film Board of Trade, a corporation organized under the laws of the District of Columbia, having an office at 805 Fifth Street, Washington, District of Columbia, and having a membership composed of the Washington exchange manager of each defendant distributor and of the Washington exchange managers of Columbia Pictures Corporation, Federal Film Service, Trio Productions, Inc., and Tiffany-Stahl Productions, Inc. Said defendant Film Board operates throughout the District of Columbia and the States of Maryland and Virginia.

For its cause of action your petitioner alleges:

II

Purpose of Petition

This petition is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (26 Stat. 209), known as the Sherman Antitrust Act, to prevent and to restrain the aforesaid defendants from further engaging, in this District and elsewhere in the United States, in violation of Section 1 of the said Act of Congress, in the conspiracy in restraint of interstate trade and commerce in motion picture films, which is hereinafter more particularly described.

[fol. 21]

III

Description of Industry

1. Production of Motion Pictures

For many years last past motion pictures have been made and produced in motion picture studios in the State of California and elsewhere by photographing scenes on reels of negative stock celluloid film, which said exposed negative films have been developed, fixed, cut and arranged in said studios and then have been shipped to laboratories at which positive prints thereof have been made. These positive prints are hereinafter referred to as motion picture films. They are the films which are run through motion picture machines which project the pictures photographed on the films on screens and thereby reproduce on such screens photoplays and other forms of motion picture entertainment which generally are designated and therefore are referred to hereinafter as motion pictures.

2. Exhibition Life of Films

Each said motion picture film is capable of approximately three hundred projections from a motion picture machine, and has an exhibition life of approximately sixty days. After that amount of use each said film is scrapped.

3. Classification of Motion Pictures

Motion pictures are classified as features, short subjects and news reels. A feature picture is a motion picture photographed on six reels or more of motion picture film. A short subject is a motion picture photographed on less than six reels of motion picture film. Short subjects gen- [fol. 22] erally are comedies, animated cartoons, travel pictures and other forms of motion picture entertainment designed to supplement a feature picture on a complete motion picture program. News reels are photographs of current events of interest throughout the world, which are taken and prepared for the purpose of being distributed at regular intervals, weekly or semi-weekly, to supplement feature films and short subjects and to complete motion picture programs.

4. Complete Program Distribution

For many years, most motion picture distributors specialized in the distribution of one of the aforesaid classes of motion picture films, but at the present time and for approximately one year last past, several of the defendant distributors of motion picture films have distributed feature films, short subjects and news reels in order to be able to supply exhibitors with complete programs.

5. Channel of Distribution

The defendant distributors are engaged in the business of distributing to motion picture theatres throughout the United States, the aforesaid motion picture films produced by themselves or by subsidiary or affiliated producing corporations, or produced by other producers of motion picture films who are not distributors thereof.

6. Motion Picture Theatres

There are approximately 22,000 motion picture theatres in the United States at which motion pictures are exhibited for the entertainment of the public. Said motion picture theatres are classified as first run and as subsequent run houses, depending on whether each first exhibits motion

[fol. 23] pictures in the city in which it is located, or whether it exhibits motion pictures after they have been shown one or more times in the same city. Approximately fifty per cent of the total receipts of motion picture distributors from motion picture exhibitors as rentals for motion picture films is obtained under contracts for such first run showings at said first run theatres.

7. Film Exchanges

Each defendant distributor maintains exchanges in the principal centers of distribution in the United States for the purpose of facilitating the distribution of its said motion picture films, and except as heretofore stated, each said distributor maintains such an exchange in each city in which one of the defendant Film Boards of Trade is located.

The States and portions of States heretofore designated as the territory in which each said Film Board of Trade operates, approximately coincide with the States and portions of States comprising the territory in which the members of such Film Board of Trade distribute motion picture films.

8. Control by Defendants

The defendant distributors distribute approximately 60 per cent of the motion picture films distributed annually in the United States. The membership of each defendant Film Board of Trade represents practically every distributor of motion picture films in the territory for which that Film Board operates. The members of the defendant Film [fol. 24] Boards distribute approximately 98 per cent of the motion picture films distributed annually in the United States. It is impossible for any motion picture theatre to secure sufficient motion picture films for its regular operation without dealing with one or more members of the defendant Film Board of Trade in the territory in which said theatre is located.

IV.

Scope of Authority of Members of Film Boards

During all the time herein mentioned, each said exchange manager who has been or who now is a member of any

defendant Film Board of Trade has been or now is authorized and empowered by his principal (whether one of said defendant distributors or another person, corporation or copartnership engaged in the business of distributing motion picture films) to conduct the business and affairs of his said principal as follows, that is to say:

1. To negotiate and bargain with operators of motion picture theatres in the territory served by his exchange for the lease of one or more of the motion picture films distributed as hereinafter described by his said principal;

2. To select the exhibitors from whom to solicit business and from whom to receive applications for contracts for the first and for the subsequent showings of said motion pictures in the cities and towns in said territory;

3. To receive applications for contracts on the standard form of exhibition contract which is described more par- [fol. 25] ticularly hereinafter, from said exhibitors so selected as aforesaid and in accordance with the terms negotiated by him with said exhibitors;

4. To transmit said applications to the principal office of his principal for acceptance or rejection, meaning in the case of each exchange manager of a defendant distributor to transmit the same to the said principal office in the City of New York in the State of New York of the said defendant distributor, for acceptance or rejection by said defendant distributor;

5. To notify said exhibitors of the acceptance or rejection of their said applications for contracts;

6. To determine the date of availability of each said motion picture distributed by his said principal for exhibition by each exhibitor having a right thereto in accordance with all said contracts therefor made by his said principal prior to the hereinafter described transportation and booking of said picture;

7. To notify each exhibitor having a contract with his said principal for the first run exhibition of any motion picture distributed by his said principal, of the date of availability of said picture for exhibition by said exhibitor;

8. To notify each exhibitor having a contract with his said principal for a subsequent run exhibition of any motion picture distributed by his said principal, of the date of availability of said motion picture for exhibition by him [fol. 26] in accordance with the provisions of the contracts of said exhibitor and of exhibitors having prior rights thereto;

9. To arrange with all exhibitors having contracts for the exhibition of each said motion picture distributed by his said principal for their respective dates for exhibiting the same in accordance with the terms of their said contracts;

10. To arrange that a suitable print of each said motion picture be available at said exchange for delivery to each said exhibitor in accordance with said arrangements;

11. To determine the manner of delivering said motion picture films to said exhibitors and the instrumentality of commerce (if any) to be employed in so delivering each said motion picture film;

12. To deliver said motion picture films to said exhibitors in accordance with said arrangements and with said determinations;

13. To do all other acts and things necessary to the performance and fulfillment by his said principal of said contracts;

14. To be a member of the Film Board of Trade in the territory served by his said exchange and to participate in all activities of said Film Board of Trade;

15. To act as a member of the Board of Arbitration (which is hereinafter more particularly described) in the territory served by his said exchange;

[fol. 27] 16. To file with said Board of Arbitration in the territory served by his said exchange, claims against exhibitors for breaches of contracts between said exhibitors and his said principal, and to prosecute said claims before said Board of Arbitration;

17. To defend before said Board of Arbitration claims filed against his said principal by exhibitors having contracts with his said principal; and

18. To do all acts and things necessary to enforce awards of said Boards of Arbitration in accordance with rules and regulations agreed upon by said defendant distributors and by said defendant Film Boards of Trade,—which said rules and regulations are described more particularly hereinafter.

V

Interstate Commerce in Motion Picture Films

1. Location of Laboratories

The location of each and every laboratory at which motion picture films have been produced as aforesaid, and from which motion picture films have been shipped and transported by said defendant distributors during the year last past to their said exchanges throughout the United States, is as follows, to wit:

a. New York, New York;
b. Long Island City, New York;
c. Brooklyn, New York;
d. Jersey City, New Jersey;
e. Bound Brook, New Jersey;
f. Fort Lee, New Jersey;
[fol. 28] g. Wilkes-Barre, Pennsylvania;
h. Los Angeles, California; and
i. Hollywood, California.

All positive prints of each motion picture distributed during said time by each defendant distributor have been produced at one of the aforesaid laboratories. All positive prints of each motion picture distributed by each defendant distributor during said time have been shipped, transported and supplied in the manner hereinafter described from that one of said laboratories at which the same were produced as aforesaid to each and every exchange in the United States of the defendant distributor which has distributed that motion picture.

2. Distribution of Positive Prints to Exchanges

For many years last past, each of said defendant distributors has prepared in advance annually its program

for its production of feature pictures and of short subjects; has announced during the spring of each year its said advance program for the distribution period of twelve months starting the following fall and has described each of said motion pictures to be produced by it during said period by giving its title and by naming the featured players therein, the director and the author thereof and the play or story (if any) from which it was derived, and has produced motion pictures each year substantially in accordance with said program, so arranging the production thereof that said positive motion picture films have been completed and have been shipped and transported to its [fol. 29] said exchanges throughout the United States, at approximately regular intervals.

3. Contracts for Exhibition of Motion Pictures

During many years last past, said defendant distributors have distributed their said motion picture films so produced as aforesaid in accordance with contracts entered into with individuals, copartnerships, and corporations engaged in the business of operating motion picture theatres throughout the United States, said persons, copartnerships, and corporations generally being referred to and being referred to hereinafter as exhibitors, and all said contracts have contained all the terms and provisions of a Standard Exhibition Contract agreed upon by said defendant distributors, and each has been identical with all others entered into at approximately the same time by said defendant distributors except as to:

a. Their dates;
b. The names of the contracting parties;
c. The names and addresses of the theatres;
d. The designations of the motion pictures leased;
e. The durations of the runs licensed, meaning thereby the number of successive days for which each contract licenses the party of the second part, the exhibitor, to exhibit each motion picture designated and described therein in the theatre specified therein;
f. The license fees; and
g. The protection, meaning thereby any provision of any of said contracts which restricts for the period of time

[fol. 30] agreed upon by said parties, the right of the party of the first part, the distributor, to license the exhibition at any other theatre or theatres competing with the specified theatre of the party of the second part, the exhibitor, of any picture or pictures thereby licensed for exhibition.

4. Contracts for Groups of Motion Pictures

During the period of time hereinafter mentioned each operator of a motion picture theatre in the United States has entered into contracts with said defendant distributors or some of them for the lease of approximately the number of feature pictures and of short subjects required to operate his motion picture theatre for an extended future period, generally for a period of one year. Substantially all of said motion pictures required by each said operator of a motion picture theatre so to operate his said theatre have been leased by contracts licensing the exhibition of a group of such motion pictures.

5. Future Deliveries under Group Contracts

The number of motion pictures constituting the aforesaid groups has varied in accordance with the aforesaid production programs of said defendant distributors, but said groups usually have comprised from twenty to sixty motion pictures. Each said motion picture included in one of said groups and so licensed as aforesaid for exhibition has been described in a schedule in each contract therefor by its title and by the names of the principal actors therein and of its director and author. Said defendant distributors have entered into most of said contracts to lease said [fol. 31] groups of motion pictures prior to the manufacture at said laboratories hereinbefore enumerated of the positive prints of any or of most of said motion pictures thereafter to be supplied to said exhibitors in performance of said contracts.

6. News Reels

All contracts entered into as aforesaid by said defendant distributors with reference to news reels have licensed the exhibition of the same and have stipulated that they

be delivered regularly, weekly or semi-weekly, throughout an extended future period, generally a period of one year. Said motion picturs on said news reels have been photographed, and said positive prints thereof have been produced, shipped, and delivered to exhibitors, so as to permit their exhibition as promptly as possible after the occurrence of the events portrayed thereby. All contracts to lease said news reels have been entered into prior to the manufacture at said laboratories of the positive prints of substantially all of said news reels thereafter to be supplied to said exhibitors in performance of said contracts.

7. Spot Booking Contracts

Each said operator of a motion picture theatre who has required individual motion pictures to fill in play dates not taken by motion pictures included in said groups, or to complete his programs of motion pictures, has secured the same by entering into "spot booking" contracts therefor, meaning thereby, contracts between an exhibitor and a distributor for the exhibition in the immediate future of a [fol. 32] motion picture or of motion pictures, positive prints of which are in the exchange of the distributor and available for such exhibition at the time such contracts are made.

8. Shipments from Laboratories to Exchanges

During the period of time herein mentioned each positive print of each motion picture produced as aforesaid at each laboratory hereinbefore listed has been packed in a tin box which has been enclosed in a wooden case; all said motion picture films so produced at said laboratories when so packed have been shipped and transported from said laboratories to said exchanges of said defendant distributors throughout the United States, over common carrier routes. The number of said prints of each said motion picture so shipped and transported by each said defendant distributor to each of its said exchanges, in the usual course of business has conformed to a minimum quota for each said exchange determined and established by each said defendant distributor as the number of said prints ordinarily reqnired to fulfill contracts for average

motion pictures in the territory served by said exchange. The number of said motion picture films so shipped and transported to each said exchange as aforesaid has been determined in the case of exceptional motion pictures and in the case of news reels largely by the number of contracts theretofore obtained from motion picture exhibitors in the territory served by each said exchange for the exhibition of each said motion picture and for the furnishing of said news reel service.

[fol. 33] 9. Replacement Shipments

Motion picture films frequently have been shipped and transported by said defendant distributors from said laboratories to said exchanges throughout the United States subsequent to the shipment and transportation of the prints comprising said fixed quotas for said exchanges or of the number of prints otherwise determined for such first shipments as aforesaid, for the purpose of supplementing said first shipments or of replacing worn out prints and thereby of enabling the performance of contracts theretofore obtained from motion picture exhibitors for the performance of said motion pictures.

10. Release and Fixing of Play Dates

Prior to the shipment and transportation of the positive prints of each motion picture distributed by each defendant distributor from the laboratory where the same were produced as aforesaid to said exchanges so maintained as aforesaid throughout the United States, each said defendant distributor has notified the manager of each of its said exchanges, of the date, generally called the release date and so designated herein, when each said motion picture would be available for exhibition in motion picture theatres in the territory served by each said exchange. Each said exchange manager thereupon has notified the exhibitors in the aforesaid territory served by his said exchange of the date of availability of each motion picture distributed through his said exchange, and has determined and arranged dates for the exhibition thereof by exhibitors [fol. 34] having contractual rights therefor. The arranging of a definite date for the exhibition of a motion pic-

ture generally has been and now is referred to, and it is referred to hereinafter as booking said picture, and the procedure for so doing during all the time herein mentioned has been described by the aforesaid agreements between said defendant distributors.

11. Distribution from Exchanges to Theatres

Each said contract licensing the exhibition of a motion picture or of motion pictures, has provided that delivery of said positive print or prints by the distributor to the exhibitor at the distributor's said exchange in the territory in which said exhibitor's theatre is located, or to a common carrier, or to the United States postal authorities for mailing, or to any agent of the exhibitor, should be deemed delivery by the distributor to the exhibitor thereunder. In accordance with said contracts entered into as aforesaid before said prints were produced at said laboratories and were transported therefrom to said exchanges in the Cities and States aforesaid:

a. Said positive prints of said motion pictures have been so delivered and have been transported and supplied from the shipping rooms of said exchanges to the theatres of said exhibitors having the first rights to the exhibition of the same by said exhibitors and their agents, and by common carriers and the United States postal authorities and other instrumentalities of commerce in accordance with designations by said distributors but at the expense of said exhibitors;

[fol. 35] b. Said motion pictures have been exhibited by said exhibitors in their motion picture theatres for the periods of time provided in their said contracts;

c. Said positive prints then have been transported and returned to said exchanges by said exhibitors and their agents, and by instrumentalities of commerce and common carriers and the United States postal authorities, in accordance with designations by said distributors but at the expense of said exhibitors;

d. Said positive prints of said motion pictures then have been transported and supplied in the manner aforesaid from said exchanges to exhibitors having the next right to

exhibit the same in accordance with their said contracts, and

e. Said course of business of said films being shipped and transported from said exchanges to the theatres of exhibitors and back to said exchanges has been continued until such time as said prints have become unfit for projection through motion picture machines, whereupon said prints have been shipped and transported by said defendant distributors from said exchanges throughout the United States, to points within the State of New York where said films have been scrapped.

12. Interstate Circulation of Prints

During the period of time herein mentioned, no designation of a specific print of any motion picture to be supplied to an exhibitor having a contract therefor has been [fol. 36] made prior to the delivery thereof to said exhibitor in the manner aforesaid, and each such deliveries of a motion picture film has been made by taking any suitable print of said motion picture available in the office of the exchange when said delivery became due.

Motion picture films frequently have been booked and selected for delivery by each said exchange in the United States of each said defendant distributor, so that they have been shipped and transported from each said exchange to motion picture theatres in a State other than that in which said exchange is located, from said theatres in said State other than that in which said exchange is located back to said exchange, from said exchange to motion picture theatres in said State in which said exchange is located, and from said theatres back to said exchange. Similarly, said motion picture films frequently have been shipped and transported between each said exchange in the United States of each said defendant distributor, and motion picture theatres in each and every State or portion of a State included in the territory in which each defendant Film Board of Trade operates as aforesaid, preceding or subsequent to exhibitions thereof in motion picture theatres in said State wherein said exchange is located, and preceding or subsequent to exhibitions thereof in motion picture theatres in a State other than that in which they were previously or subsequently exhibited.

[fol. 37] 13. Interchange of Prints Between Exchanges

The said defendant distributors during the period of time herein mentioned have maintained exchanges in the aforesaid distribution centers throughout the United States, and motion picture films shipped and transported from the laboratory at which the same were produced, to one of said exchanges, frequently have been shipped and transported from said exchange to another of said exchanges of the same defendant distributor so located as aforesaid in another State than the State in which said first mentioned exchange has been located, for the temporary purpose of being supplied to exhibitors within the territory served by said second exchange in accordance with contracts therefor. After having fulfilled said temporary purpose at said second exchange, said films have been shipped and transported from said second exchange in said State other than that in which said first exchange has been located, back to said first exchange in another State, where they again have been distributed to exhibitors in the aforesaid territory served in the manner aforesaid by said exchange.

VI

Continuity of Interstate Commerce

During all the time herein mentioned there has been a continuous flow and course of interstate trade and commerce in motion picture films between the several States of the United States, particularly between the said City of [fol. 38] New York in said State of New York and in this Division and District, and other states of the United States, consisting as aforesaid of:

1. The soliciting and making of contracts for the future delivery over an extended period of time of motion picture films to be produced and delivered as aforesaid during said future period;

2. The transportation of said films from said laboratories to said exchanges throughout the United States, for the purpose of performing said contracts for the future delivery of said films;

3. The continuing distribution of said films from said exchanges to motion picture theatres in the aforesaid territory served by each said exchange;

4. The interchange of said films between each said exchange and other exchanges of the same defendant distributor in other States of the United States, and

5. The final shipment of said films from said exchanges throughout the United States to points within the State of New York.

VII

Distributors and Exchange Managers Engaged in Interstate Commerce

All said flow and course of interstate trade and commerce which has consisted of the distribution of said motion picture films from said exchanges throughout the United States to said motion picture theatres in said territory served by each said exchange, and of the temporary [fol. 39] interchange of said motion picture films by each said exchange with said other exchanges in States other than the State in which is located the exchange to which said films first had been transported and supplied as aforesaid, has been during all the time herein mentioned under the direction and control of said exchange managers who have been members of the defendant film boards of trade, and said defendant distributors and said exchange managers during the period of time herein mentioned have carried on trade and commerce among the several states of the United States within the meaning of the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

VIII

The Conspiracy

The defendants, each well knowing all the matters and things hereinbefore alleged, unlawfully have engaged in a conspiracy in restraint of said interstate trade and commerce in motion picture films so carried on as aforesaid by said defendant distributors, by said members of said de-

fendant Film Boards of Trade, and by all said exhibitors of motion pictures in the United States, that is to say, in a conspiracy now here described in restraint of, and which throughout the period of time herein mentioned in fact un- [fol. 40] lawfully has restrained, and which now is restraining said interstate trade and commerce, to wit:

Since on or about July, 1922, said defendant distributors have carried on their said interstate trade and commerce in motion picture films in accordance with and pursuant to an understanding and agreement between said defendant distributors:

a. To coerce and to require every exhibitor of motion picture films in the United States to submit to arbitration any question or dispute with any member of any defendant Film Board of Trade arising under any contract licensing the exhibition of a motion picture or of motion pictures;

b. To coerce and to require every exhibitor of motion pictures in the United States to surrender and to waive the right to have any question or dispute with any member of any defendant Film Board of Trade arising under any contract licensing the exhibition of a motion picture or of motion pictures, settled and determined by any court having jurisdiction of such question or dispute;

c. To coerce and to require every exhibitor of motion pictures in the United States to comply with any award rendered against him in any arbitration proceeding as aforesaid, without recourse or appeal to any court having jurisdiction of said question or dispute.

Since in or about July, 1922, said defendant distributors [fol. 41] have carried on their said interstate trade and commerce in motion picture films in accordance with and pursuant to an understanding and agreement between said defendant distributors to carry out and to accomplish the aforesaid purposes and objects:

a. By refusing to enter into any contract with any exhibitor of motion pictures in the United States to license the exhibition of any motion picture and to transport, supply and deliver any motion picture film in the course of

the aforesaid interstate trade and commerce, except on the terms and under the conditions (hereinafter specified) agreed upon by said defendant distributors;

b. By refusing to transport, supply and deliver in the course of the aforesaid interstate trade and commerce, any motion picture film to any exhibitor of motion pictures in the United States having a contract therefor, in the event of the failure or refusal of said exhibitor fully to comply with any term or condition (hereinafter specified) agreed upon by said defendant distributors.

All in the manner and by means more particularly set forth hereinafter.

IX

The Means

1. Uniform Contracts

Since said July, 1922, the defendant distributors have carried on their said interstate trade and commerce in motion picture films with all exhibitors of motion pictures in [fol. 42] the United States pursuant to the aforesaid understanding and agreement, and in accordance therewith:

a. In or about July, 1922, said defendant distributors prepared, adopted and agreed to use a Uniform Exhibition Contract, a copy of which is attached hereto, marked Exhibit "A," and made a part hereof;

b. In or about February, 1926, said defendant distributors prepared, adopted and agreed to use a Standard Exhibition Contract, filed with defendant Motion Picture Producers and Distributors of America, Inc., and dated March 1, 1926, a copy of which is attached hereto, marked Exhibit "B," and made a part hereof;

c. In or about January, 1928, said defendant distributors prepared, adopted and agreed to use after May 1, 1928, a Standard Exhibition Contract filed with American Arbitration Association of New York City and dated May 1, 1928, a copy of which is attached hereto, marked Exhibit "C," and made a part hereof;

d. From July, 1922 until March 1, 1926, said defendant distributors, in accordance with their said understanding and agreement, contracted to license the exhibition of motion pictures in motion picture theatres only by contracts containing all the terms and provisions of said Uniform Exhition Contract;

e. Since March 1, 1926, said defendant distributors have contracted and they now are contracting to license the ex- [fol. 43] hibition of motion pictures in motion picture theatres only by contracts containing all the terms and provisions of said Standard Exhibition Contract, dated March 1, 1926.

Your petitioner alleges on information and belief that said defendant distributors will continue so to contract and to use said Standard Exhibition Contract dated March 1, 1926, until May 1, 1928, and that after said date they will contract to license the exhibition of motion pictures in motion picture theatres only by contracts containing all the terms and provisions of said Standard Exhibition Contract dated May 1, 1928.

2. Contract Provisions for Arbitration and for Enforcing Awards

Each said Uniform Exhibition Contract and Standard Exhibition Contract has provided:

a. That before either party thereto should resort to any court to determine, enforce or protect the legal rights of either thereunder, each should submit to a Board of Arbitration for determination all claims and controversies arising under the contract, and that such determination should be pursuant to the rules of arbitration provided for in the contract and to the rules of procedure and practice adapted by said Board of Arbitration;

b. That the parties thereto should abide by and forthwith comply with any decision and award of said Board of Arbitration;

c. That any such decision or award should be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction in force on the date of the rendition of such award;

[fol. 44] d. That each party thereto waived the right of trial by jury upon any issue arising under said contract and agreed to accept as conclusive the findings of fact made by said Board of Arbitration and consented to the introduction of such findings in evidence in any judicial proceeding;

e. That in the event the exhibitor should fail or refuse to submit to arbitration any claim or controversy arising under the contract or under any other uniform or standard contract which the exhibitor might have with the distributor or with any other distributor, or to abide by and forthwith to comply with any decision or award of said Board of Arbitration, the distributor might at its option demand for its protection and as security for the performance by the exhibitor of each and every existing contract between the distributor and the exhibitor, payment by the exhibitor of an additional sum not exceeding $500.00 under each existing contract, to be retained until the complete performance of all such contracts between such distributor and such exhibitor; and

f. That in the event of the exhibitor's failure to pay said additional sum within seven days after demand, the distributor might by written notice to the exhibitor suspend service under said contract until said sum should be paid and or might terminate said contract.

3. Organization of Film Boards

In accordance with their said understanding and agreement and to supplement and to carry out the aforesaid provisions of said Uniform and Standard Exhibition Contracts, [fol. 45] the defendant distributors caused their exchange managers in or about July, 1922, to organize and to become members of the aforesaid defendant Film Boards of Trade. Since said July, 1922, said defendant distributors have maintained said defendant Film Boards of Trade, and have caused and required each of their said exchange managers to be a member of the Board or Boards located in the territory served by his exchange, and to participate in all the activities of such Board or Boards. Said defendant distributors further have prepared and have caused each said defendant Film Board of Trade to adopt and to operate in accordance with the following agreements with refer-

ence to arbitration and to the enforcement of awards of boards of arbitration:

4. Agreements for Arbitration and Enforcing Awards

a. In or about July, 1922, said defendant distributors prepared and caused each said defendant Film Board of Trade to adopt By-Laws of Film Boards of Trade Relating to Arbitration, a copy of which is attached hereto and marked Exhibit "D" and made a part hereof;

b. In or about February, 1926, said defendant distributors prepared and caused each said defendant Film Board of Trade to adopt Rules and Regulations Relating to Arbitration, bearing date March 1, 1926, specified in the Standard Exhibition Contract, a copy of which said Rules and Regulations is attached hereto, marked Exhibit "E" and made a part hereof;

[fol. 46] c. In or about November, 1926, said defendant distributors prepared and caused each said defendant Film Board of Trade to adopt Rules and Regulations Relating to Arbitration, Specified in the Standard Exhibition Contract and dated December 1, 1926, a copy of which said Rules and Regulations is attached hereto, marked Exhibit "F" and made a part hereof; and

d. In or about February, 1928, said defendant distributors prepared and caused each said defendant Film Board of Trade to adopt, to be effective May 1, 1928, Rules of Arbitration Specified in the Standard Exhibition Contract filed with American Arbitration Association, dated May 1, 1928, a copy of which said Rules of Arbitration is attached hereto, marked Exhibit "G" and made a part hereof.

e. From July, 1922 until March 1, 1926 each defendant Film Board of Trade operated under and in accordance with the aforesaid By-Laws of Film Boards of Trade Relating to Arbitration, and each member of each defendant Film Board of Trade conducted the aforesaid interstate trade and commerce in motion picture films of his principal in accordance with the aforesaid understanding and agreement between said defendant distributors and in conformity with the provisions of said uniform contract and of said By-Laws of Film Boards of Trade Relating to Arbitration.

f. From March 1, 1926 until December 1, 1926, each defendant Film Board of Trade operated under and in ac- [fol. 47] cordance with the Rules and Regulations Relating to Arbitration, dated March 1, 1926, and each member of each defendant Film Board of Trade conducted the aforesaid interstate trade and commerce in motion picture films of his principal in accordance with the aforesaid understanding and agreement between said defendant distributors and in conformity with the provisions of said Standard Exhibition Contract and of said Rules and Regulations Relating to Arbitration; and

g. From December 1, 1926 until the date of the filing of this petition, each defendant Film Board of Trade has operated under and in accordance with the Rules and Regulations Relating to Arbitration, dated December 1, 1926, and each member of each defendant Film Board of Trade has conducted the aforesaid interstate trade and commerce in motion picture films of his principal in accordance with the aforesaid understanding and agreement between said defendant distributors and in conformity with the provisions of said Standard Exhibition Contract dated March 1, 1926, and of said Rules and Regulations Relating to Arbitration dated December 1, 1926.

Your petitioner alleges on information and belief that each said defendant Film Board of Trade will continue to operate under and in accordance with said Rules and Regulations Relating to Arbitration dated December 1, 1926, until May 1, 1928, and that after said date each will operate under and in accordance with said Rules of Arbitration [fol. 48] bearing said date; that each member of each defendant Film Board of Trade will conduct the aforesaid interstate trade and commerce in motion picture films of his said principal in accordance with the aforesaid understanding and agreement between said defendant distributors and in conformity with the provisions of said Standard Exhibition Contract dated March 1, 1926, and of said Rules and Regulations Relating to Arbitration dated December 1, 1926, until May 1, 1928, and that after said date each member of each defendant Film Board of Trade will conduct the aforesaid interstate trade and commerce in motion picture films of his principal in accordance with the aforesaid understanding and agreement between said defendant

distributors and in conformity with the provisions of said Standard Exhibition Contract dated May 1, 1928 and of said Rules of Arbitration dated May 1, 1928.

5. Provisions of Rules for Arbitration and Enforcing Awards.

The aforesaid Rules and Regulations Relating to Arbitration dated December 1, 1926, and the aforesaid Rules of Arbitration, each has provided:

a. That the Board of Arbitration established in each territory where a defendant Film Board of Trade is located, consist of three members of said Film Board of Trade and of three proprietors or managers of theatres not owned or controlled by producers and or distributors of motion picture films;

[fol. 49] b. That each Board of Arbitration have power to hear disputes rising under any Uniform Exhibition Contract and or any Standard Exhibition Contract, to determine disputes or controversies, to make findings therein, to direct what shall be done by either or both parties in respect to the matter in dispute, and to fix the maximum amount (but not in excess of $500.00 as aforesaid) which any member of any Film Board of Trade may demand as security under any existing contract with any exhibitor in the event of the failure of such exhibitor to submit to arbitration or to comply with an award;

c. That the Board of Arbitration notify the secretary of the Film Board of Trade located in each city out of which the exhibitor is served of the name and address of each exhibitor who has refused to submit to arbitration or has refused to comply with a decision of the Board of Arbitration, and of the maximum amount which any member of any Film Board of Trade having a contract with such exhibitor may demand as security;

d. That each secretary of such Film Board of Trade thereupon transmit the foregoing information to each member of said Board;

e. That on receipt of such notice each member of any such Film Board of Trade having an existing contract with any such exhibitor, demand payment as security from that ex-

hibitor of the amount calculated in accordance with the provisions of said Rules and Regulations Relating to Arbitra- [fol. 50] tion or of said Rules for Arbitration, but not in excess of the maximum fixed by the Board of Arbitration;

f. That if such security is not furnished to any distributor under any such existing contract within seven days after the aforesaid demand therefor, said distributor either terminate that said contract or suspend service thereunder until the exhibitor either has furnished said security or has complied with the decision of the Board of Arbitration;

g. That no distributor having terminated or suspended service under any contract, thereafter reinstate that contract or resume service thereunder unless and until the exhibitor has furnished to such distributor the security demanded, or has complied with the decision of the Arbitration Board.

6. Supplemental Agreements for Enforcing Awards.

Since in or about July, 1922, said exchange managers who have constituted the membership of a substantial portion of said defendant Film Boards of Trade have carried on the aforesaid interstate trade and commerce in motion picture films of their said principals and the businesses and affairs of said defendant Film Boards of Trade in accordance with and pursuant to understandings and agreements between said members of said Film Boards of Trade which have supplemented and exceeded the provisions of said Uniform and Standard Exhibition Contracts and said By-Laws and [fol. 51] Rules relating to Arbitration and to the enforcement of awards. The members of said defendant Film Boards of Trade have entered into said supplemental understandings and agreements and have carried on the said interstate trade and commerce of their principals in accordance with and pusuant to said supplemental understandings and agreements without the knowledge and against the general instructions of the defendant distributors and of the defendant Association.

Said understandings and agreements are as follows, to wit:

a. To demand as security for the performance of each and every existing contract between any member of any

Film Board of Trade and any exhibitor who has failed to comply with any decision of any Board of Arbitration, the maximum amount of security fixed by said Board of Arbitration;

b. To refuse to contract to spot book any motion picture film or motion picture films with any exhibitor who has failed to comply with any decision of any Board of Arbitration;

c. To refuse to contract for the future exhibition of any motion picture film or motion picture films with any exhibitor who has failed to comply with any decision of any Board of Arbitration;

d. To refuse to resume service under any existing contract with any exhibitor when said service thereunder has been suspended because of the failure of said exhibitor to [fol. 52] comply with any award of any Board of Arbitration, unless and until said exhibitor has complied with said award or has complied with each and every demand for security made as aforesaid by members of said Film Boards of Trade;

e. To refuse to furnish, transport, supply and deliver any motion picture film or motion picture films to any exhibitor who has failed to comply with any award of any Board of Arbitration, except on the conditions precedent that said exhibitor furnish a cash deposit as security in the manner hereinbefore described;

f. To refuse to contract to furnish, transport, supply and deliver any motion picture film or motion picture films with any exhibitor who has failed to comply with any award of any Board of Arbitration, except on the condition precedent that said exhibitor furnish a cash deposit as security in the manner hereinbefore described;

g. To enforce the payment of promissory notes and of other obligations and debts of motion picture exhibitors in the manner and by the means hereinbefore described by which compliance with awards is enforced.

Said supplemental understandings and agreements have been entered into by said members of said defendant Film Boards of Trade to accomplish and to carry out the pur-

poses and objects of the aforesaid conspiracy to which all the defendants herein have been and are parties as aforesaid.

[fol. 53] The formation of said supplemental understandings and agreements and the conduct of the interstate trade and commerce in motion picture films pursuant to and in accordance with said supplemental understandings and agreements have been accomplished through the instrumentality of the defendant Film Boards of Trade and of the procedure for enforcing awards established and maintained as aforesaid by the defendant distributors and by the defendant Film Boards of Trade.

Your Petitioner alleges on information and belief that unless all members of all Film Boards of Trade are enjoined from continuing in effect said supplemental understandings and agreements or any of them, and from entering into hereafter agreements and understandings similar to said supplemental understandings and agreements or any of them, the members of many defendant Film Boards of Trade will continue to carry on the interstate trade and commerce in motion picture films of their principals in accordance with and pursuant to such understandings and agreements.

X

Prayer

Wherefore, plaintiff prays:

First. That writs of subpoena issue directed to each and every of the defendants, commanding them to appear and answer, but not under oath (answer under oath being hereby expressly waived), the allegations continued in this complaint, and to abide by and perform such orders and decrees as the court may make in the premises.

[fol. 54] Second. That the court, upon the final hearing of this cause, adjudge and decree that the defendants have engaged in a conspiracy in restraint of interstate trade and commerce in motion picture films, in the manner and by the means hereinbefore described, in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopo-

lies"; and that the defendants and their officers, agents, and employees be perpetually enjoined, individually and collectively, from further engaging in, carrying out, or maintaining the said conspiracy, or any other of like character or effect, and particularly from further employing any or all of the above-described means of carrying out said conspiracy.

Third. That plaintiff have such other, further, and general relief as the nature of the case may require and the court may deem proper.

United States of America. —— ——, United States Attorney for the Southern District of New York. John G. Sargent, the Attorney General. William J. Donovan, the Assistant to the Attorney General. C. Stanley Thompson, William R. Benham, Ralstone R. Irvine, Harold Jones, Special Assistants to the Attorney General.

[fol. 55] EXHIBIT A TO PETITION

Uniform Exhibition Contract

Agreement, made in triplicate this — day of ——, 19--, between —— ——, a corporation (hereinafter called "the Distributor"), party of the first part, and —— ——, an exhibitor operating the —— Theatre, No. — —— Street, —— City, —— State (hereinafter called "the Exhibitor"), party of the second part, witnesseth:

That in consideration of the mutual covenants herein contained and of the payment on account herein provided for, the parties hereto agree as follows:

License Granted; Payment

First. The Distributor hereby grants to the Exhibitor, and the latter accepts, a license under copyright, subject to the terms and conditions hereinafter stated, to exhibit, during the year commencing —— --, 19—, each of the copyrighted photoplays hereinafter designated as more particularly described and identified in the schedule herein con-

tained (or — copyrighted photoplays starring —) at the above-named theatre only, for the number of successive days hereinafter specified. The Exhibitor agrees to pay for such license as to each of such photoplays the sums hereinafter specified, at least three (3) days in advance of the date of shipment from the Distributor's exchange or the last previous Exhibitor of the positive print of such photoplay in time for exhibition in the Exhibitor's theatre on the first [fol. 56] exhibition date of such photoplay, hereinafter set forth or determined as hereinafter provided. Such license shall be specifically for the exhibition of such photoplays at said theatre on said exhibition dates and for no other purpose.

If any of said photoplays shall be released by the Distributor after the period above specified, the Distributor shall be obliged to deliver such photoplays to the Exhibitor hereunder as though released within said period; and the Exhibitor agrees to accept pay for and exhibit them at such later period pursuant to the terms hereof.

Return of Prints

Second. The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with any appurtenances furnished for temporary use, to the exchange of the Distributor from which the Exhibitor is served (herein termed "the Distributor's exchange"), or as otherwise directed by the Distributor, immediately after the last exhibition of such positive print permitted hereunder, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints and appurtenances from the Distributor's exchange or the last previous exhibitor of any such positive print (as the case may be) and back to the Distributor's exchange; or if directed by the Distributor, to ship positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is understood that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor, and proper

[fol. 57] receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

Loss and Damage to Prints

Third. The Exhibitor shall pay to the Distributor the sum of six cents (6¢) for each lineal foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof to the Exhibitor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in such positive prints to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any other breach of this agreement. The Distributor shall repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints upon their return to the Distributor within thirty (30) days after the date when the same should have been returned hereunder. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft, destruction or injury of any positive print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, on the day of receipt of such print, shall have wired the Distributor's exchange that such print was received by him in a damaged or partially destroyed condition and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Time and Place of Exhibition

Fourth. The Exhibitor agrees to exhibit said photoplays only at the theatre above specified on the date or dates above [fol. 58] set forth or determined as hereinafter provided. The Exhibitor will not allow any positive print to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, and will not exhibit or permit the exhibition of any such positive print at any other time or place than those hereinafter specified or determined as hereing provided.

Delivery of Prints; Prevention of Delivery

Fifth. The Distributor agrees to deliver to a common carrier or other agent of the Exhibitor a positive print of each of the above photoplays in time for exhibition at the Exhibitor's theatre on the dates above specified or determined as hereinafter provided, but the Distributor shall not be liable for any failure or delay in making deliveries resulting from the elements, accidents, strikes, fires, court orders, censor rulings, delays of any common carrier, failure of the Producers of any such photoplays to make or deliver them to the Distributor, or of any of the above-named stars or other performers to appear therein in time for delivery as above provided, or the failure or delay of any prior exhibitor in returning any positive print to the Distributor, or forwarding it to a subsequent exhibitor, or by reason of any cause not within the control of the Distributor whether of a similar or any other nature. It is understood, however, that the neglect or default of the Distributor's employees hereunder shall not be deemed a cause beyond the Distributor's control.

Protection

Sixth. During the life of this agreement the Distributor agrees not to authorize or license the exhibition of any of the photoplays above specified in violation of any protection or "run" clause contained in this contract.

[fol. 59] Mutual Remedies for Breach

Seventh. In the event of default by the Exhibitor in exhibiting or paying for any photoplays in accordance with the provisions hereof or if the Exhibitor shall exhibit or permit the exhibition of any said photoplays at any time or place other than those above specified, the Distributor may at its option terminate this contract or suspend the delivery of additional photoplays hereunder until such defaults shall cease and be remedied, but the election of either of said remedies shall be without prejudice to any other of the rights or remedies of the Distributor in the premises by reason of such breach. In the event of the intentional violation by the Distributor of any protection or "run" clause

contained in this contract, or in the event of the intentional default of the Distributor in delivering any photoplay to the Exhibitor hereunder and while such last-mentioned default continues, the Exhibitor may at his option terminate this contract by giving immediate notice in writing to the Distributor, but the election of such remedy shall be without prejudice to any other rights or remedies of the Exhibitor in the premises by reason of such breach. No waiver by either party of any breach or default by the other party shall be construed as a waiver of any subsequent breach or default by such other party.

Selection or Designation of Play Dates

Eighth. The Distributor shall give the Exhibitor at least four (4) weeks' notice in writing of the date upon which each photoplay, the exhibition dates of which are not specified in this contract, will be available to the Exhibitor and shall at the same time notify the Exhibitor that the latter may select [fol. 60] exhibition dates within the fortnight commencing with such date of availability. Within two (2) weeks after the mailing of such notice the Exhibitor shall notify the Distributor in writing of the exhibition date or dates (within such fortnight) selected by the Exhibitor. In the event of the failure of the Exhibitor so to do, the Distributor may, at any time after the expiration of said period of two (2) weeks from the date of the initial notice of availability sent by the Distributor, designate the exhibition date or dates of such photoplay by mailing notice in writing thereof to the Exhibitor at least three (3) weeks before the first exhibition date so designated; and the period of protection (if any) afforded the Exhibitor under this contract shall commence to run with the expiration of the fortnight described in the initial notice of availability.

In the event that the exhibition date or dates selected by the Exhibitor as above provided are not open to the Exhibitor, the notice of availability theretofore sent the Exhibitor by the Distributor shall be null and void and the Distributor shall be obligated to mail a new notice of availability to the Exhibitor. Any exhibition dates selected by the Exhibitor (if open) or designated by the Distributor as above provided, or otherwise agreed upon between the

Distributor and the Exhibitor, shall be for all purposes the exhibition dates of such photoplay as though originally specified in this contract.

In case of a contract for a series of feature photoplays, five reels or more in length, and featuring a particular star or director, the Exhibitor shall not be required hereunder [fol. 61] to exhibit more than one photoplay of such series every five (5) weeks.

Reissues

Ninth. None of the photoplays specified in this agreement are re-issues from old negatives or are old negatives renamed, except the following:

Prevention of Performance by Exhibitor

Tenth. If prevented by censorship, fire, or similar damage by the elements, riots, insurrections, acts of God or the public enemy, public calamity, or the order of any Court of competent jurisdiction which shall prevent the performance of this contract by the Exhibitor, the latter shall not be liable for damages of any kind, nature or description, but the Exhibitor shall give prompt notice to the Distributor of his inability to perform said contract and the reason therefor.

Assignment; Sale of Theatre

Eleventh. This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre above specified, he may assign this contract to the purchaser of such interest without the written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee, such assignment, however, not to relieve the Exhibitor of his liability hereunder. This privilege of assignment without the consent of the Distributor shall not apply to contracts not to be performed within one year.

Exhibition and Advertising

Twelfth. The Exhibitor agrees to run photoplays as delivered without alteration, except with the written or tele-

graphic approval of the Distributor, subject to requirements of competent public authorities necessitating any [fol. 62] change. The Exhibitor also agrees to advertise and announce each photoplay as a "

Picture." In all newspaper advertising and publicity relating to said photoplays, the Exhibitor shall adhere to the form of announcement contained in the advertising matter furnished by the Distributor.

Taxes

Thirteenth. The Exhibitor agrees to pay to the Distributor, upon demand, any Government tax imposed or based upon the sums payable under this contract.

Percentage Bookings

Fourteenth. If this contract calls for payments computed upon the Exhibitor's gross receipts, the Exhibitor shall furnish to the Distributor daily a correct itemized statement of the gross receipts of said theatre for admission thereto upon the play dates of said photoplays, upon forms supplied by the Distributor should the latter so demand; and the Distributor shall have access at all reasonable times for the purpose of inspection to the box office and to all books and records relating to the Exhibitor's box office receipts during the period of exhibition of said photoplays.

Admission Fee

Fifteenth. The Exhibitor shall charge an actual minimum admission fee of — cents at said theatre on the dates when said photoplays shall be exhibited thereat.

Advertising Matter

Sixteenth. All advertising matter used by the Exhibitor in connection with the exhibition of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

[fol. 63] Payment on Account

Seventeenth. The Exhibitor agrees to pay to the Distributor, upon execution hereof, the sum of — dollars ($—) as payment on account of the sums last payable hereunder.

Acceptance of Application

Eighteenth. No promises or representations have been made by either party to the other except as set forth herein. This agreement shall be deemed an application for a contract only and shall not become binding until accepted in writing by an officer of the Distributor and notice of acceptance sent to the Exhibitor as hereinafter provided. The deposit by the Distributor of the check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the following periods after the date of application, to-wit, seven (7) days if the Exhibitor's theatre is located in the City of New York, Essex, Hudson or Bergen Counties, New Jersey or Westchester County, New York, ten (10) days if said theatre is located elsewhere East of the Mississippi and twenty-five (25) days if located West of the Mississippi, said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

[fol. 64] Arbitration

Nineteenth. The parties hereto agree that before either of them shall resort to any court to determine, enforce or protect the legal rights of either hereunder, each will submit to the Board of Arbitration (established or constituted pursuant to rules and regulations now on file in the office of the Motion Picture Producers and Distributors of America, Inc., and identified by the signature of its President, a copy of which will be furnished to the Exhibitor upon request) in the city wherein is situated the branch office of the Distributor from which the Exhibitor is served, all claims and controversies arising hereunder for determination pur-

suant to the rules of procedure and practice from time to time adopted by such Board of Arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such Board of Arbitration in any such arbitration proceeding, and agree and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such Board of Arbitration, and consents to the introduction of such findings in evidence in any judicial proceeding.

In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other film service contract providing for arbitration which the Exhibitor may have with this or [fol. 65] any other distributor or to abide by and forthwith comply with any decision of such Board of Arbitration upon any such claim or controversy so submitted, or if the Exhibitor shall be found by such Board of Arbitration in any such arbitration proceeding to have been guilty of such a breach of contract as shall in the opinion of such Board of Arbitration justify this or any other distributor in requiring security in dealings with the Exhibitor, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 and not less than $100 under each existing contract, such sum to be retained by the Distributor until the complete performance of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance, if any, to be returned to the Exhibitor; and in the event of the Exhibitor's failure to pay such additional sum within seven days after demand, the Distributor may at its option by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract.

In the event that the Distributor shall fail or refuse to

consent to the submission to arbitration of any claim or controversy arising under any film service contract which the Distributor may have with the Exhibitor, or to abide by and forthwith comply with any decision and award of such Board of Arbitration upon any such claim or con- [fol. 66] troversy so submitted, or if the Distributor shall be found by such Board of Arbitration in any such arbitration proceeding to have been guilty of such a breach of contract as shall in the opinion of such Board of Arbitration justify the Exhibitor in refusing to deal with the Distributor, the Exhibitor may at his option terminate this and any other existing contract between the Exhibitor and the Distributor by mailing notice by registered mail within two (2) weeks after such failure, refusal or finding, and in addition the Distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any exhibitor until the Distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this section Nineteenth shall not apply to any such claim or claims.

Any such termination by either party, however, shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any such breach of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the laws of the State of New York.

The parties hereto agree that every existing contract between the parties hereto shall be and hereby is amended so as to include the foregoing section with the same force and effect as if originally incorporated therein.

Cancellation

Twentieth. (Optional Clause.) If this contract designates certain photoplays by title, it shall be non-cancellable as to such photoplays. If it embraces a series of photoplays not designated by title it may be cancelled as to such [fol. 67] series by either party after two photoplays of such series have been played and paid for, by notice in writing to the other party within ten (10) days after playing the second of said photoplays, such cancellation to take

effect after — additional photoplays shall have been played and paid for.

Direction to Salesmen: While a salesman has every right to trade among prospective customers to obtain the best offer possible for his product, after he has selected a particular exhibitor whose offer he believes to be the best obtainable and takes a written application from such exhibitor, he should forward the application to the office of his company and make no further effort to sell the same service to any other exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms.

EXHIBIT B TO PETITION

Standard Exhibition Contract

March 1, 1926.

Agreement, made in—cate this — day of —— 19—, between —— —— a corporation hereinafter called "the Distributor"), party of the first part, and —— ——, an exhibitor operating the —— Theatre, No. — —— Street City of ——, State of —— (heinafter called "the Exhibitor"), party of the second part, witnesseth:

[fol. 68] The parties hereto agree as follows:

Warranty as to Form

First. The Distributor warrants that there is contained herein all of the numbered Articles of the "Standard Exhibition Contract" filed with the Motion Picture Producers & Distributors of America, Inc., identified by the signature of its President on on the 1st day of March, 1926. Articles — hereof are in addition thereto.

License

Second. The Distributor hereby grants to the Exhibitor, and the latter accepts, a license under the respective copy-

rights of the several photoplays designated and described, in the Schedule herein, subject to the terms and conditions hereinafter stated to exhibit (during the year commencing with the date fixed or determined as hereinafter provided for the exhibition in the above named theatre of the first photoplay deliverable hereunder) each of such photoplays at the said theatre only, for the number of successive days in the said schedule specified.

Such license shall be specifically for the exhibition of such photoplays at said theatre on the exhibition date or dates specified in said Schedule or determined as hereinafter provided and for no other purpose.

Time and Place of Exhibition

Third. The Exhibitor agrees to exhibit said photoplays but only at the theatre above specified on the said date or dates and will not allow any positive print thereof to leave the Exhibitors possession during the period specified for the exhibition thereof by the Exhibitor, nor exhibit or permit the exhibition of any such positive print at any other time or place than those herein specified or determined as herein provided.

[fol. 69] Payment of Fixed Sums

Fourth. The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least three (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous Exhibitor of the positive print thereof.

Percentage Bookings

Fifth. If this contract calls for payment or any part thereof computed upon the Exhibitor's gross receipts the Exhibitor shall furnish to the Distributor daily a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each photoplay for which payment is so required to be made. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor.

The Distributor shall have access during the period of exhibition of each such photoplay and for a period of sixty (60) days after the receipt by the Distributor of the final box office statement, for the purpose of inspection, to the box office and to all books and records relating to the Exhibitor's box office receipts during the period of exhibition of each such photoplay.

Payment or any part thereof computed upon the Exhibitor's box office receipts shall be made daily during the exhibition of the print of each photoplay for which payment is so required to be made.

Payment on Account

Sixth. Payment, if any, made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

[fol. 70]

Protection and Run

Seventh. During the life of this contract the Distributor agrees not to authorize or license the exhibition of any such photoplays in violation of the "run" or "protection" period, if any, in the schedule specified. Unless otherwise provided herein such "protection" period shall be computed from the first date of exhibition of each photoplay as fixed herein.

Delivery of Prints

Eighth. The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof a positive print of each of such photoplays in time for exhibition at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's Exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

Selection or Designation of Play Dates

Ninth. The exhibition date or dates of each of the photoplays unless definitely specified in the said Schedule or otherwise agreed upon shall be determined as follows:

(a) The Distributor shall mail the Exhibitor at least fifteen (15) days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor consistent with prior "runs" and/or "protection" heretofore or hereafter granted to other Exhibitors.

(b) Within fourteen (14) days after the mailing of such notice the Exhibitor shall select the exhibition date or dates within the four (4) weeks' period commencing with such date of availability by giving written notice to the Distribu-
[fol. 71] tor of the date or dates so selected.

If the exhibition date or dates so selected by the Exhibitor are not available to the Exhibitor then the exhibition date or dates shall be designated as follows:

1. If other dates within said four (4) weeks' period shall be available the Exhibitor shall immediately select from such other available dates another date or other dates failing which the Distributor shall designate the date or dates by mailing two (2) weeks' notice thereof to the Exhibitor, but such date or dates so designated shall not be fixed earlier than two (2) nor later than six (6) weeks from the exhibition date first selected by the Exhibitor;

2. If no other date or dates within said four (4) weeks' period shall be available (after the Exhibitor's written request therefor) the Exhibitor shall designate the date or dates by immediately giving written notice thereof to the Distributor but such date or dates so designated shall not be fixed earlier than two (2) nor later than six (6) weeks from the last day of the said four (4) weeks' period. If the Exhibitor fails to so immediately designate such date or dates as provided in this paragraph (2) the Distributor shall designate the date or dates within the period last specified by mailing to the Exhibitor two (2) weeks' notice of such date or dates.

(c) If the Exhibitor fails to make such selection within fourteen (14) days after the mailing of such notice of availability then

(1) the distributor may at any time thereafter designate the exhibition date or dates (no such date to be prior to the
[fol. 72] initial date of availability) by mailing notice

thereof to the Exhibitor at least fourteen (14) days before the first exhibition date so designated;

(2) provided that the Distributor shall have then entered into a contract with any other Exhibitor in which contract is specified a "run" of any of the photoplays prior in point of time and immediately preceding the "run" (specified in the Schedule) granted the Exhibitor and provided further that such photoplay shall have been exhibited by such other Exhibitor the Distributor shall in the manner specified in subdivision (1) of this paragraph (c) designate the exhibition date or dates of such photoplay within the period of forty-five (45) days commencing with the date of availability specified in the notice provided for in paragraph (a) of this Article.

(d) In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to paragraph (c) of this Article the period of "protection," if any, specified in the Schedule shall begin upon the day after the expiration of the four weeks' period specified in paragraph (b) of this Article.

(e) The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available) or designated as in this Article provided or otherwise agreed upon between the Distributor and the Exhibitor shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the said Schedule.

(f) In case this contract embraces a series of feature photoplays, five reels or more in length, and featuring a particular star or director, the Exhibitor shall not be required hereunder to exhibit more than one photoplay of [fol. 73] such series every five (5) weeks.

Return of Prints

Tenth. The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print licensed hereunder, in the same condition as when received by the Exhibitor, reason-

able wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's Exchange or the last previous Exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's Exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's Exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor the Exhibitor agrees in addition to paying the Distributor the damage, if any, so caused the [fol. 74] Distributor to pay to such other exhibitor the damages, if any, so caused such other exhibitor as shall be determined by Arbitration as provided for in Article Twentieth hereof. In case the Exhibitor shall be damaged by reason of the failure or delay of any other exhibitor in returning any positive print to the Distributor or in forwarding (as directed by the Distributor) any such print to the Exhibitor the Exhibitor agrees to assert such claim for damages only against such other exhibitor and that such claim and the damage, if any, shall be determined by Arbitration provided for as aforesaid.

Loss and Damage to Prints

Eleventh. The Exhibitor shall pay to the Distributor the sum of four (4) cents for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. If any such positive print or any part thereof is colored, then for any such colored print or part thereof the Exhibitor shall pay to the Distributor the laboratory cost thereof instead of four (4) cents per linear foot. (Laboratory invoice for such colored print or part thereof shall be conclusive of

such laboratory cost upon the parties hereto.) Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date [fol. 75] when the same should have been returned hereunder. The Exhibitor shall immediately notify the Distributor's Exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, on the day of receipt of such print and prior to the second public exhibition thereof, shall have telegraphed the Distributor's Exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Titles of Photoplays; Reissues

Twelfth. The Distributor reserves the right to change the title of any of the photoplays specified in the said Schedule but shall not substitute any other photoplay therefor without the consent of the Exhibitor; and warrants that none of such photoplays are reissues from old negatives or are old negatives renamed excepting those specifically set forth as such in the said Schedule.

Assignment and Sale of Theatre

Thirteenth. The contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre above specified, he may assign this contract to the purchaser of such interest without the written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee, such assign-

ment, however, shall not relieve the Exhibitor of liability [fol. 76] hereunder, unless the Distributor consents in writing to release the Exhibitor from such liability.

Exhibition and Advertising

Fourteenth. The Exhibitor agrees to run photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of competent public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as a " ." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "first run" in the City or Town wherein the theatre hereinabove specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to, and until after the completion of, the exhibition of such photoplay by any other exhibitor having the right to the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other "Standard Exhibition Contract" with any other exhibitor.

[fol. 77] Warranty as to Advertising

Fifteenth. The Distributor warrants that the photoplays herein provided for will not contain any advertising matter for which compensation is received.

Taxes

Sixteenth. The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now

and or hereafter imposed or based upon the delivery and or the exhibition of positive prints of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the Arbitration Society of America.

Minimum Admission Charge

Seventeenth. The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Delay in or Prevention of Performance

Eighteenth. In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire [fol. 78] insurrection, acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this Contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be

waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance provided, that if such delay and/or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending within ten (10) days after the expiration of such three (3) months' period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor [fol. 79] rulings, delays of any common carrier, delays in production or failure of the producers of any of such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, or the failure or delay of any prior exhibitor in returning any positive print to the Distributor or in forwarding any positive print to a subsequent exhibitor, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Distributor with respect to any such photoplay shall be waived. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees to

accept, pay for and exhibit any such photoplay at any such later period pursuant to the terms hereof, provided, that if such delay and or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay [fol. 80] the delivery hereunder of which has been so delayed or prevented, by sending within ten (10) days after the expiration of such three (3) months' period to the other party notice in writing to such effect.

Waiver

Nineteenth. The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Arbitration

Twentieth. The parties hereto agree that before either of them shall resort to any court to determine, enforce or protect the legal rights of either hereunder, each shall submit to the Board of Arbitration (established or constituted pursuant to rules and regulations now on file in the office of the Motion Picture Producers and Distributors of America, Inc., bearing date March 1, 1926, and identified by the signature of its President, a copy of which will be furnished to the Exhibitor upon request) in the city wherein is situated the Exchange of the Distrtibutor from which the Exhibitor is served or if there be no such Board of Arbitration in such city then to the Board of Arbitration in the city nearest thereto (unless the parties hereto agree in writing that such submission shall be made to a Board of Arbitration located in another specified city), all claims and controversies arising hereunder for determination pursuant to the rules of procedure and practice adopted by such Board of Arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such Board of Arbitration in any such arbitration proceeding, and agree and consent that any such decision or award shall be

enforceable in or by any court of competent jurisdiction [fol. 81] pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such Board of Arbitration, and consents to the introduction of such findings in evidence in any judicial proceeding.

In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other film service contract providing for arbitration which the Exhibitor may have with the Distributor or any other distributor or to abide by and forthwith comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted, or if the Exhibitor shall be found by such Board of Arbitration in any such arbitration proceeding to have been guilty of such a breach of contract as shall in the opinion of such Board of Arbitration justify the Distributor or any other distributor in requiring security in dealings with the Exhibitor, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 under each existing contract, such sum to be retained by the Distributor until the complete performance of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance, if any to be returned to the Exhibitor; and in the [fol. 82] event of the Exhibitor's failure to pay such additional sum within seven (7) days after demand, the Distributor may by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and or terminate this contract.

In the event that the Distributor shall fail or refuse to consent to the submission to arbitration of any claim or controversy arising under this or any other film service contract providing for arbitration which the Distributor may have with the Exhibitor, or to abide by and forthwith

comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted, or if the Distributor shall be found by such Board of Arbitration in any such arbitration proceeding to have been guilty of such a breach of contract as shall in the opinion of such Board of Arbitration justify the Exhibitor in refusing to deal with the Distributor, the Exhibitor may at his option terminate this and any other existing contract between the Exhibitor and the Distributor by mailing notice by registered mail within two (2) weeks after such failure, refusal or finding, and in addition the Distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any exhibitor until the Distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this Article Twentieth shall not apply to any such claim or claims.

Any such termination by either party, however, shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any such breach [fol. 83] of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the law of the State of New York.

Representations

Twenty-first. No promises or representations have been made by either party to the other except as set forth herein.

Acceptance of Application

Twenty-second. This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the Exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 15; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 15; Cleveland 15; Dallas 20; Denver [fol. 84] 20; Des Moines 15; Detroit 15; El Paso 25; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 15; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 15; Peoria 15; Philadelphia 10; Pittsburgh 10; Portland, Ore., 30; St. Louis 15; Salt Lake City 20; San Francisco 20; Seattle, 20; Washington, D. C., 10.

A copy of this application, signed by the Exhibitor shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Schedule

In the Schedule there shall be provided space in which shall be specified either the title of each photoplay, or the name of the star, director or author thereof or the brand by which such photoplays are known.

The Schedule shall also contain the words "Protection Period" and the word "Run" with space to specify the protection period or run, if any agreed upon.

* Cancellation

* Optional Cancellation Clause:[1] If this contract designates certain photoplays by title, it shall be non-cancellable

[1] It is optional with Distributors to incorporate or omit this clause.

as to such photo-plays. If it embraces a series of photoplays not designated by title it may be cancelled as to such series by either party after two photoplays of such series have been exhibited and paid for, by notice in writing to the other party after playing the second of such photoplays, [fol. 85] such cancellation to take effect after — (—) additional photoplays shall have been exhibited and paid for.

Direction to Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms.

Exhibit C to Petition

Direction to Salesmen:[1] While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

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[1] (Note.—This direction to Salesmen shall be printed upon but shall not be deemed a part of the Standard Exhibition Contract.)

[fol. 86] Standard Exhibition Contract

May 1, 1928.

Agreement, made in one or more counterparts, between —— ——, a corporation (hereinafter referred to as "the Distributor"), party of the first part, and the Exhibitor hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated, party of the second part, Witnesseth:

The parties hereto agree as follows:

Warranty as to form

First: The Distributor warrants that there is contained herein all of the numbered Articles of the "Standard Exhibition Contract" agreed upon by the Contract Committee appointed at the 1927 Motion Picture Trade Practice Conference (an authenticated copy of which has been filed with the American Arbitration Association). The Distributor also warrants that any clauses in addition thereto appearing upon the Schedule have been approved by such Contract Committee, and that any additional clauses appearing upon a Rider, if any hereto annexed, are not inconsistent with any of such numbered Articles. It is agreed that any clauses contained in such Rider shall be of no effect unless such Rider be signed by the Exhibitor. It is agreed that any agreement contained in the Schedule covering or describing what photoplays are licensed hereunder and in respect of any license fee, exhibition dates and any provision permitted by the provisions of the numbered Articles hereof shall not be deemed an additional clause for the purpose of this Article.

[fol. 87] License

Second. (a) The Distributor hereby grants to the Exhibitor, and the latter accepts, a license under the respective copyrights of the several photoplays designated and described in the Schedule herein subject to the terms and conditions hereinafter stated to exhibit (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliver-

able hereunder, unless otherwise in the Schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said Schedule provided. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

(b) In case any of such photoplays (except photoplays which shall be "roadshown") shall not be "generally released" by the Distributor for distribution in the United States during the period beginning —— —, ——, and ending —— —, ——, such photoplays shall be excepted and excluded from this license unless the Exhibitor shall give written notice to the Distributor not later than thirty days after such last mentioned date that the Exhibitor elects to exhibit all of such photoplays hereunder. If such notice be given the Distributor shall deliver and the Exhibitor shall exhibit such photoplays as and when available for exhibition hereunder, except that any of such photoplays not so "generally released" within two years after such last mentioned date shall be also excepted and excluded. The Distributor may exhibit or license the ex- [fol. 88] hibition of any photoplays excepted and excluded as aforesaid when and where desired by the Distributor, and all claims or causes of action in respect thereof are hereby expressly waived by the Exhibitor.

Time and Place of Exhibition

Third. The Exhibitor agrees to exhibit under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not to allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such photoplays, and for no other purpose.

Payment

Fourth. The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein speci-

fied at least three (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

Payment on Account

Fifth. Payment, if any, made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

Protection and Run

Sixth. During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such photoplays in conflict with the "run" or "protection period," if any, in the Schedule specified. Unless otherwise provided herein, such "protection period" shall be computed from the last date of exhibition of each photoplay as fixed herein. If "protection" is granted hereunder [fol. 89] against a specified theatre or theatres which "protection" shall indicate that it was the intention of the Distributor to grant such "protection" against all of the theatres in the immediate neighborhood or vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule, such "protection" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Delivery and Return of Prints

Seventh. The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof or otherwise in the Schedule provided for a positive print suitable for exhibition of each of such photoplays for exhibition at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the

Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's Theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the Distributor from which the Exhibitor is served or as other- [fol. 90] wise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor as shall be determined by Arbitration as provided for in Article Eighteenth hereof.

Selection or Designation of Play Dates

Eighth. The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each [fol. 91] photoplay will be available for exhibition by the

Exhibitor, consistent with prior runs and/or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date, or dates, so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A). If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates; failing to do so, then the Distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days' notice thereof to the Exhibitor.

(B). If no other date or dates within said thirty day period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B", [fol. 92] the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days' notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date

or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the thirty-day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article Eighth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a par- [fol. 93] ticular star or director, the Exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss of and Damage to Prints

Ninth. The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for

the damage or destruction of any positive print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public [fol. 94] exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Description and Titles of Photoplays; Reissues

Tenth. The Exhibitor shall not be required to accept for any photoplay described in the Schedule as the photoplay of a star, or of a director, or based upon a specified story, book or play, or by an identifying description, any other photoplay of a different star or different director, or based upon a different story, book or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the Distributor to change the title of any of such photoplays or, as respects any photoplay based upon any story, book or play, prevent the making of any alterations, changes in or adaptations thereof.

The Distributor warrants that none of the photoplays licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the Schedule.

Assignment Upon Sale of Theatre

Eleventh. This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without the written consent of

the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writ-
[fol. 95] ing to release the Exhibitor from such liability.

Exhibition and Advertising

Twelfth. The Exhibitor agrees to run photoplays (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as a " ." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "first run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to, and until after the completion of, the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other "Standard Exhibition Contract" with any other exhibitor.

[fol. 96] Warranty as to Advertising

Thirteenth. The Distributor warrants that the photoplays herein provided for will not contain any advertising matter for which compensation is received by the Distributor.

Taxes

Fourteenth. The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the photoplays and/or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Minimum Admission Charge

Fifteenth. The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Delay in or Prevention of Performance

Sixteenth. In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrec- [fol. 97] tion, acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the

time of such delay, unless performance thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance, provided, that if such delay and/or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months' period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, or of the United States Postal authorities, delays in production or failure of the producers [fol. 98] of any of such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, provided, however, that in case any such delay or prevention shall prevent the Distributor from "generally releasing" any such photoplay during the period specified in paragraph (b) of Article Second, the provisions of such paragraph shall govern, unless performance because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Distributor with respect to any such photoplay shall be waived. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of per-

formance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees to accept, pay for and exhibit any such photoplay at such later period pursuant to the terms hereof.

Waiver

Seventeenth. The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

[fol. 99] Arbitration

Eighteenth. The parties hereto agree that before either of them shall resort to any court to determine, enforce or protect the legal rights of either hereunder, each shall submit to the Board of Arbitration (established or constituted pursuant to the Rules of Arbitration filed with the American Arbitration Association, 342 Madison Avenue, New York City, bearing date May 1, 1928 and identified by the signatures of the Contract Committee appointed at the 1927 Motion Picture Trade Practice Conference, a copy of which will be furnished to the Exhibitor upon request in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served or if there be no such Board of Arbitration in such city then to the Board of Arbitration in the city nearest thereto (unless the parties hereto agree in writing that such submission shall be made to a Board of Arbitration located in another specified city), all claims and controversies arising hereunder for determination pursuant to the said Rules of Arbitration and the rules of procedure and practice adopted by such Board of Arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such Board of Arbitration in any such arbitration proceeding, and agree and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction

pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such Board of Arbitration, and consents to the intro [fol. 100] duction of such findings in evidence in any judicial proceeding.

In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other Standard Exhibition Contract which the Exhibitor may have with the Distributor or any other distributor or to abide by and forthwith comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 under each existing contract, such sum to be retained by the Distributor until the complete performance of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance, if any to be returned to the Exhibitor; and in the event of the Exhibitor's failure to pay such additional sum within seven (7) days after demand, the Distributor may by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract.

In the event that the Distributor shall fail or refuse to consent to the submission to arbitration of any claim or controversy arising under this or any other Standard Exhibition Contract providing for arbitration which the Distributor may have with the Exhibitor, or to abide by and forthwith comply with any decision or award of such Board [fol. 101] of Arbitration upon any such claim or controversy so submitted, within the number of days specified in Article Twenty-Second opposite the name of the City in which such Board of Arbitration is located, the Exhibitor may at his option terminate this and any other existing contract between the Exhibitor and the Distributor by mailing notice by registered mail within two (2) weeks after

such failure or refusal, and in addition the Distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any exhibitor until the Distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this Article Eighteenth shall not apply to any such claim or claims.

Any such termination by either party, however, shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any such breach of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the law of the State of New York.

Verbal Promises; Representations

Nineteenth. This Contract is complete and no promises or representations have been made by either party to the other except as set forth herein.

Option to Exclude if Group Licensed

Twentieth. If the license herein granted shall apply to an entire group of photoplays offered by the Distributor to the Exhibitor at one time, and not otherwise, the Exhibitor shall have the right to exclude from this contract up to but not exceeding ten percent of the total number of such photoplays, but only if the Exhibitor shall give the Distributor written notice to such effect at any time not [fol. 102] later than fourteen (14) days before the date fixed for the exhibition of any such photoplay hereunder, and if at the same time the Exhibitor shall pay to the Distributor one-half of the license fee payable in respect of any such photoplay. In computing such ten percent fractions of less than one-half shall be disregarded. If any such photoplay shall, because of such exclusion, be thereafter licensed by the Distributor for the same run as that specified in this contract, for exhibition at another theatre where such excluded photoplay would not have been exhibited if not so excluded; then one-half of the license fee (up to but not exceeding the amount paid by the Exhibitor to the Distributor as a condition of so excluding such photo-

play) received by the Distributor for such re-license, shall be credited to the Exhibitor by the Distributor.

If the license fee for any such photoplay so excluded is to be computed either in whole or in part upon a percentage of gross receipts of the Exhibitor's theatre, then for the purpose of computing such one-half of such license fee payable hereunder in respect of such photoplay, such gross receipts for each day that any such photoplay is licensed hereunder for exhibition thereat shall be deemed to be the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to such date of availability of such photoplay.

Racial or Religious Subject-matter

Twenty-first. If the Exhibitor shall claim that the exhibition at the theatre hereinafter specified of any photoplay licensed hereunder will be offensive to the public in the place where such theatre is located, because of racial or religious subject matter, and if the Exhibitor shall give [fol. 103] written notice to the Distributor of such claim within a reasonable time prior to the date fixed for the Exhibition thereof hereunder such claim shall be immediately submitted to the Board of Arbitration herein specified. If such Board of Arbitration shall specifically determine that the exhibition of such photoplay at such theatre will be offensive to said public because of racial or religious subject matter, then such photoplay shall be excepted from this contract, and not otherwise. The Distributor may exhibit or license the exhibition of any photoplay so excepted when and where desired by the Distributor free from all claims of the Exhibitor.

If the Distributor shall be of the opinion that any photoplay licensed hereunder will be offensive because of racial or religious subject matter, to the public in the place where the Exhibitor's theatre is located, the Distributor shall have the right to except and exclude such photoplay from this contract, upon condition that such photoplay shall not thereafter be licensed for exhibition in such place unless such racial or religious subject matter is eliminated therefrom in which case such photoplay shall again be deemed licensed hereunder.

Acceptance of Application

Twenty-second. This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account [fol. 104] of any sums payable hereunder or the delivery of a print of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleson 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 15; Dallas 30; Denver 20; Des Moines 15; Detroit 15; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore., 30; St. Louis 15; Salt Lake City 30; San Francisco 20; Seattle 30; Washington, D. C., 14.

This application and any application for other photo plays of the Distributor executed by the Exhibitor at the same time shall, for the purpose of this Article only, be [fol. 105] deemed one application unless an agreement to the contrary contained in the Schedule is specifically signed by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Approved Additional Clauses

Cancellation

1. If this contract designates certain photoplays by title, it shall be non-cancellable as to such photoplays. If it embraces a series of photoplays not designated by title it may be cancelled as to such series by either party after two photoplays of such series have been exhibited and paid for, by notice in writing to the other party after playing the second of said photoplays, such cancellation to take effect after —— ( ) additional photoplays shall have been exhibited and paid for.

Separate Applications

2. [2] The Distributor's right to approve or reject this application or any other application signed by the Exhibitor at the same time, or any other time, is not dependent upon the approval or rejection by the Distributor of such other application or this application.

Agreed to. . . . . .

——, Exhibitor.

[fol. 106] Road Shows

3. The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow", at any time prior

[2] (NOTE.—This clause may be added to the Schedule only in respect of photoplays produced by a producer not controlled by the Distributor, and only if the Distributor's contract with such producer provides that such pictures shall be sold separately and apart from other pictures distributed by the Distributor, and shall be of no effect unless specifically agreed to in writing by the Exhibitor.)

to the exhibit thereof hereunder, such of the photoplays licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such photoplays shall be so roadshown.

If any such roadshow exhibition shall be in the city of New York, N. Y., and if the Exhibitor's theatre be situated in a territory then served by the Distributor's exchange or exchanges located in said City, the Distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said City upon sending written notice to that effect to the Exhibitor not later than eight weeks after the commencement of such roadshow exhibition in such City, provided the Distributor shall by like notice except and exclude such photoplay from all other contracts containing this clause and licensing the exhibition of such photoplay in such territory. Such exception and exclusion shall not be affected in case the Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

If any such roadshow exhibition shall be in the city of Los Angeles, Cal., and if the Exhibitor's theatre be situated [fol. 107] in the territory then served by the Distributor's exchange or exchanges located in said City, the Distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said City, upon the same terms and conditions above provided for the exception and exclusion of photoplays roadshows in the city of New York.

If and when any such roadshow exhibition (except any roadshow exhibition in New York and/or Los Angeles) shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, such photoplay so roadshown in such territory shall forthwith be excepted and excluded from this license. The Distribu-

tor shall send written notice to that effect, to the Exhibitor within fourteen (14) days after such roadshow exhibition commences.

The Distributor may so exercise such right to except and exclude any such photoplay from time to time, in the respective territories, as above defined, in the United States. Any photoplay so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such photoplay in the United States, and such photoplay shall be exhibited hereunder as and when available.

For each photoplay that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other photoplays licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to that effect [fol. 108] not later than fourteen days before the date fixed for the exhibition hereunder of such other photoplay. The Distributor may exhibit and or license the exhibition of any and all photoplays excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by it, free from all claims of the Exhibitor in respect thereof.

Percentage Bookings

4. If this contract calls for payment or any part thereof computed upon the Exhibitor's gross receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each photoplay for which payment is so required to be made. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such date or dates an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine the Exhibitor's books and records insofar as they relate to such gross receipts. The Distributor, or

its authorized representative, shall also have access for a period of sixty (60) days after the receipt by the Distributor of the final box office statement, to all of the Exhibitor's books and records for the purpose of verifying such box office statement. The Distributor agrees that any information obtained by it pursuant to the provisions of this Clause will be treated as confidential, except in any arbitration proceeding or litigation in respect of this contract. [fol. 109] The Distributor agrees, unless such representative be a regular employee of the Distributor, not to employ as such representative any person a resident of or regularly employed in the place where the Exhibitor's theatre is located, excepting with the consent of the Exhibitor.

Liquidated Damages, Percentage Bookings

5. If the license fee of any photoplay licensed herunder is to be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit such photoplay as provided in this contract, the Exhibitor shall pay to the distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such photoplay (in addition to any fixed sums payable hereunder in respect of such photoplay) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such photoplay should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such photoplay for less than the full number of days provided for in this contract, such sum equal to such precentage shall be computed, upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereat of such photoplay.

On the same side of the contract upon which the Exhibitor is required to sign, there shall be printed the Schedule. In the Schedule there shall be specified the license fees of the photoplays; the number of days for which each is li- [fol. 110] censed; the run and protection period, if any, agreed upon; any provision in respect of the exhibition date or dates of the several photoplays; the description of the photoplays, which shall be identified by specific designa-

tion of a star or director, or as based upon specific literary material or described by an identifying description of the story, provided that in long term and/or service contracts providing for more than one year's "releases," the photoplays may be generally described as photoplays released by the Distributor or a like general description, and in such long term and/or franchise and/or service contracts the provisions of the Standard Exhibition Contract may be incorporated therein. Any "short subject" photoplay may be identified or described by brand or similar description.

All approved additional clauses, if any, added to the Standard Exhibition Contract and any provision permitted by the provisions of the numbered Articles shall be set forth in the Schedule.

No re-issues of photoplays or old negatives renamed shall be included in any group of new photoplays. No "short subjects" or "news reels" shall be included in any group of feature photoplays, and the licensing of "news reels" or "short subjects" groups shall not be made a condition of licensing the exhibition of feature photoplays or vice versa, provided that the Distributor may include in any long term, franchise and/or service contract, feature photoplays and/or "short subject" photoplays and/or "news reels."

[fol. 111] EXHIBIT D TO PETITION

By-Laws of Film Board of Trade Relating to Arbitration

Article I

Election Board of Arbitration

The Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of Trade, called distributors' representatives, and three of whom shall be proprietors or managers of theatres in the zone where the Film Board of Trade is located, called exhibitors' representatives; provided however, that in no event shall such exhibitors' representatives be managers of theatres owned or controlled by producers or distributors.

Each of the three distributors' representatives shall be selected by the members of the Film Board of Trade to serve for one year or until his successor is appointed. The three exhibitors' representatives shall be selected and appointed by the local exhibitors' association. In the event there is no local exhibitors' association or if such association fails to appoint, then the President of the Film Board of Trade shall request the President of the Chamber of Commerce, or if there is none or if he fails to appoint, then the mayor of the city in which the Film Board of Trade is located, to select and appoint the three exhibitors' representatives. Failing such selection and appointment the designation of exhibitors' representatives shall be by the President of the Film Board of Trade. Each of the exhibitors' representatives shall serve for one year or until his successor is appointed; provided, however, that any exhibitors' representatives designated otherwise than by the local exhibitors' association shall be replaced by exhibitors' representatives designated by such exhibitors' association as soon as such designation is made.

[fol. 112] No member of the Board of Arbitration shall sit in any case or controversy in which he has an interest direct or indirect.

In case of refusal or disqualification by reason of interest or sickness or other reason on the part of a distributors' representative to serve on the Board of Arbitration, the remaining distributors' representatives or representative may appoint a substitute for such member; similarly if a vacancy exists in respect of an exhibitors' representative, the remaining representatives or representative may appoint a substitute.

In case of a tie vote the Board of Arbitration shall appoint a seventh arbitrator, and if they are unable to agree then the Chairman of the Board of Arbitration shall request the President of the Chamber of Commerce, or if there is none or if he fails to appoint, then the mayor, of a city in which the Film Board of Trade is located to appoint a seventh arbitrator who shall be neither a distributor nor exhibitor nor interested in the motion picture business.

Article II

Powers of Board of Arbitration

The Board of Arbitration shall have general power, after a thorough and impartial hearing of any dispute or controversy, (1) to determine such dispute or controversy, (2) to make findings thereon, (3) to direct what shall be done by either or both parties with respect to the matter in dispute, and (4) in the event of the failure of the exhibitor to submit to arbitration or to comply with the award or in the event the exhibitor has been found to have committed such a breach of contract as in the opinion of the Board justifies members in requiring security in future dealings with the exhibitor, to fix the maximum amount (not exceeding that specified in Article Nineteenth of the Uniform Exhibition Contract, hereinafter termed "the Arbitration Clause") that each distributor may demand as security pursuant to said Arbitration Clause.

[fol. 113] It shall adopt its own rules of procedure and evidence, which shall provide for reasonable notice to the parties of the time and place of the hearing and of the nature of the dispute, and afford the parties an opportunity to be heard in person or by counsel and to submit evidence. The findings, determination and direction of the Board of Arbitration upon such controversy shall be conclusive and binding upon the parties thereto.

The Board of Arbitration shall have no power to adopt or apply any rule which shall be at variance with any of the provisions of the contract between the parties or the rights and obligations of the parties thereunder.

The Board of Arbitration shall not entertain a claim or controversy unless the same arises under a contract containing provisions for arbitration substantially in accord with the Arbitration Clause, except with the written consent of both parties to such claim or controversy; nor shall the Board of Arbitration be obliged to entertain any such claim or controversy unless the same arises under a contract substantially in accord with the Uniform Exhibition Contract.

Article III

Reference of Controversies to Board of Arbitration

1. Members shall endeavor, whenever possible, to settle claims and controversies with exhibitors without resorting to arbitration.

2. Whenever a member shall be unable to settle a claim or controversy with an exhibitor arising under a contract containing the Arbitration Clause, he shall notify the Secretary that he desires to submit the claim or controversy to the Board of Arbitration, advising the Secretary of the name of the exhibitor, his address, and the nature of the controversy. The Secretary shall thereupon give written notice to the member, the exhibitor and the Board of Arbitration that the controversy has been referred to the Board of [fol. 114] Arbitration at the request of the member.

3. Similarly, on receipt by the Secretary of a notice from any exhibitor that such exhibitor desires to submit to arbitration a controversy with a member arising under a contract containing the Arbitration Clause, the Secretary shall give written notice to the Exhibitor, the member and the Board of Arbitration that the controversy has been referred to the Board of Arbitration at the request of the exhibitor.

4. Nothing herein contained shall be construed to prohibit the filing of claims or controveries by members or exhibitors directly with the Board of Arbitration, pursuant to the rules of procedure adopted by the Board of Arbitration.

Article IV

Enforcement of Decisions of Board of Arbitration

1. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade in writing of (a) the names of any members and the names and addresses of any exhibitors who have been found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration, or (3) to have com-

mitted such a breach of contract as in the opinion of the Board of Arbitration justifies the exhibitor in refusing to deal with a member or justifies members in requiring security in future dealings with the exhibitor, as the case may be; and (b) in cases where the exhibitor is the party at fault, of the maximum amount (not exceeding that specified in the Arbitration Clause) which each distributor may demand as security pursuant to the Arbitration Clause.

[fol. 115] 2. Upon receipt of such information, the Secretary of the Film Board of Trade shall advise all members, for their exclusive and confidential information, (a) of the names and addresses of all exhibitors who shall have been found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of the Board of Arbitration justifies members in requiring security in future dealings with such exhibitors; and (b) of the sum which the Arbitration Board has fixed as the maximum amount which distributors may demand as security of the exhibitor.

3. On receipt of any such notice, each member having a contract or representing a distributor who has a contract with the exhibitor named in the notice containing the Arbitration Clause, shall demand payment by the exhibitor of such sum (not exceeding the maximum amount fixed by the Board of Arbitration as aforesaid) as in the judgment of such member or distributor shall be sufficient to protect him or it in the performance of such contract by the exhibitor. Thereafter each member to whom the exhibitor shall have failed to pay the amount of security so demanded by such member within the time specified shall proceed either (a) to terminate the contract with the exhibitor, or (b) to suspend service thereunder until such exhibitor shall have furnished such security or complied with the decision of the Arbitration Board, as the case may be. No member who shall have so terminated, or suspended service under any contract with an exhibitor shall thereafter reinstate or resume service under said contract unless and until such exhibitor shall have furnished said security to such mem-

ber or shall have complied with the decision of the Arbitration Board.

4. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade in writing of the names and addresses of any exhibitors, previously [fol. 116] found by said Board of Arbitration to have committed one or more of the acts specified in paragraph 1 of this Article IV, who (a) shall thereafter have submitted to arbitration, or (b) shall have complied with the decision of the Board of Arbitration, or (c) shall have remedied the breach of contract which justifies members in requiring security of such exhibitor, and who shall in the opinion of the Board of Arbitration be entitled to be dealt with by members at their option without requiring security in such dealings. Upon receipt of any such information the Secretary of the Film Board of Trade shall forthwith advise all members in writing for their exclusive and confidential information of the names and addresses of all such exhibitors and of the finding or opinion of the Board of Arbitration in the premises, and thereupon each member who has terminated any contract with such exhibitor or suspended service thereunder as provided in paragraph 3 of this Article IV, may at his option reinstate such contract or resume service thereunder, as the case may be.

5. The Secretary shall also advise the members from time to time of the names of members who shall have been found by the Arbitration Board (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of the Board of Arbitration justifies the exhibitor in refusing to deal with said member or the distributor represented by him. Thereafter such member and the distributor represented by him shall not be entitled to redress from the Board of Arbitration upon any claim or controversy against any exhibitor until such member has sub- [fol. 117] mitted to arbitration or has complied with the decision of the Arbitration Board or remedied such breach of contract, as the case may be.

6. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade in writing of the name of any member, previously found to have committed one or more of the acts specified in paragraph 1 of this Article IV, who shall thereafter have submitted to arbitration or have complied with the decision of the Board or have remedied the breach of contract of which such member had been found guilty, as the case may be. Upon receipt of such information the Secretary of the Film Board of Trade shall advise all members in writing of the name of such member and of the finding or opinion of the Board of Arbitration in the premises, and thereupon such member and the distributor represented by him shall again be entitled to redress from the Board of Arbitration upon claims against exhibitors.

Article V

Repeal of Existing By-Laws, Rules and Regulations

All by-laws, rules and regulations relating to any of the matters covered by Articles I, II, III and IV hereof are hereby repealed.

Articles VI

Amendment or Repeal

Articles I, II, III and IV hereof may be amended or repealed only by a —— vote of the members at a Special Meeting duly called for that purpose or two weeks' written notice to the members, which notice shall specify the amendment or repeal proposed to be submitted at such Special Meeting.

[fol. 118] The arbitration clause in the so-called "Uniform Exhibition Contract" reads as follows:

The parties hereto agree that before either of them shall resort to any court to determine, enforce or protect the legal right of either hereunder, each will submit to the Board of Arbitration (established or constituted pursuant to rules and regulations now on file in the office of the Motion Picture Producers and Distributors of America, Inc., and identified by the signature of its President, a copy of

which will be furnished to the Exhibitor upon request) in the city wherein is situated the branch office of the Distributor from which the Exhibitor is served, all claims and controversies arising hereunder for determination pursuant to the rules of procedure and practice from time to time adopted by such Board of Arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such Board of Arbitration in any such arbitration proceeding, and agree and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such Board of Arbitration, and consents to the introduction of such findings in evidence in any judicial proceeding.

In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other film service contract providing for arbitration which the Exhibitor may have with this or any other distributor or to abide by and forthwith comply with any decision of such Board of Arbitration upon any such claim or controversy so submitted, or if the Exhibitor shall be found by such Board of Arbitration in [fol. 119] any such arbitration proceeding to have been guilty of such a breach of contract as shall in the opinion of such Board of Arbitration justify this or any other distributor in requiring security in dealings with the Exhibitor, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 and not less than $100 under each existing contract, such sum to be retained by the Distributor until the complete performance of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance, if any, to be returned to the Exhibitor; and in the event of the Exhibitor's failure to pay such addi-

tional sum within seven days after demand, the Distributor may at its option by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract.

In the event that the Distributor shall fail or refuse to consent to the submission to arbitration of any claim or controversy arising under any film service contract which the Distributor may have with the Exhibitor, or to abide by and forthwith comply with any decision and award of such Board of Arbitration upon any such claim or controversy so submitted, or if the Distributor shall be found by such Board of Arbitration in any such arbitration proceeding to have been guilty of such a breach of contract as shall in the opinion of such Board of Arbitration justify the Exhibitor in refusing to deal with the Distributor, the Exhibitor may at his option terminate this and any other existing contract between the Exhibitor and the Distributor by mailing notice by registered mail within two (2) weeks after such failure, refusal or finding, and in addition the Distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any [fol. 120] exhibitor until the Distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this section nineteenth shall not apply to any such claim or claims.

Any such termination by either party, however, shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any such breach of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the laws of the State of New York.

The parties hereto agree that every existing contract between the parties hereto shall be and hereby is amended so as to include the foregoing section with the same force and effect as if originally incorporated therein.

Exhibit E to Petition

Rules and Regulations Relating to Arbitration (Bearing Date March 1, 1926)

Rule I

Election of Board of Arbitration

The Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of Trade (called Distributors' representatives) and three of whom shall be proprietors or managers of theatres in the territory where the Film Board of Trade is located (called Exhibitors' representatives) provided, however, that in no event shall such Exhibitors' representatives be managers of theatres owned or controlled by Producers or Distributors.

Each of the three Distributors' representatives and two alternate Distributors' representatives shall be appointed by the members of the Film Board of Trade to serve for three months and thereafter until his successor is ap- [fol. 121] pointed. Each of the three Exhibitors' representatives and two alternate Exhibitors' representatives shall be appointed by the local Exhibitors' association. If there is no local Exhibitors' Association or if such Association fails to appoint Exhibitors' representatives or alternates then the President of the Film Board of Trade shall request the President of the Chamber of Commerce of the City in which the Film Board of Trade is located or if there is no such Chamber of Commerce or if the President thereof fails to appoint then the Mayor of such city, to appoint the three Exhibitors' representatives and two alternate Exhibitors' representatives. Failing such appointment the designation of Exhibitors' representatives and alternates shall be made by the President of the Film Board of Trade. Each of the Exhibitors' representatives and alternates shall serve for three months and thereafter until his successor is appointed, provided that any Exhibitors' representative or alternate appointed otherwise than by the local Exhibitors' association shall be replaced by an Exhibitors' representative or alternate

appointed by such Exhibitors' association as soon as such appointment is made.

No member of the Board of Arbitration shall hear or determine any case or controversy in which he has an interest, direct or indirect.

Upon written notice given to the Secretary of the Board of Arbitration at least one (1) week prior to the date fixed for the hearing of any controversy submitted for arbitration each of the parties to such controversy shall have the right to challenge not more than two members of the Board of Arbitration, in which case the Distributors' alternate representative or representatives or the Exhibitors' alternate representative or representatives, as the case may be, shall act as a member or members of the Board of Arbitration to *to* hear and determine such controversy in place of the member or members thereof challenged.

[fol. 122] In case of the refusal, disqualification, challenge or disability of any Distributor's representative to hear and determine any such controversy the remaining Distributor's representatives or representative shall appoint from the Distributor's alternate representatives a substitute for such Distributor's representative.

In case of the refusal, disqualification, challenge or disability of any Exhibitor's representative to hear and determine any such controversy the remaining Exhibitor's representatives or representative shall appoint from the Exhibitor's alternate representatives a substitute for such Exhibitor's representative.

In case of a tie vote a majority of the members of the Board of Arbitration shall appoint a seventh arbitrator, and if they are unable to so appoint a seventh arbitrator, then the Secretary of the Board of Arbitration shall request the President of the Chamber of Commerce of the city in which the Film Board of Trade is located, or if there is none or if he fails to appoint, then the Mayor of such city to appoint a seventh arbitrator, who shall be neither a distributor nor exhibitor nor interested in the motion picture business.

Rule II

Powers of Board of Arbitration

The Board of Arbitration shall have general power, after a thorough and impartial hearing of any dispute or contro-

versy, (1) to determine such dispute or controversy, (2) to make findings thereon, (3) to direct what shall be done by either or both parties with respect to the matter in dispute, and (4) in the event of the failure of the exhibitor to submit to arbitration or to comply with the award or in the event the exhibitor has been found to have committed such a breach of contract as in the opinion of the Board justifies distributors represented by members of Film [fol. 123] Boards of Trade in requiring security in future dealings with the exhibitor, to fix the maximum amount, (not exceeding that specified in the Arbitration Clause of the Standard Exhibition Contract) which each such distributor may demand as security pursuant to said Arbitration Clause.

It shall adopt its own rules of procedure and practice, which shall provide for reasonable notice to the parties of the time and place of the hearing and of the nature of the dispute, afford the parties an opportunity to be heard in person or by counsel and to submit evidence.

The findings, determination and directions of the Board of Arbitration upon such controversy shall be conclusive and binding upon the parties thereto.

In any controversy submitted to a Board of Arbitration upon the complaint of a Distributor which is determined in favor of the Exhibitor the Board of Arbitration may in its discretion include in its decision or award an award of a sum to be paid by the Distributor to the Exhibitor not to exceed the cost to the Exhibitor of railroad transportation from and return to the city or town in which the Exhibitor's theatre is located and an additional sum not to exceed $10 provided the Exhibitor has attended the hearing.

The Board of Arbitration shall not have power or authority to adopt or apply any rule which shall be at variance with any of the provisions of the Standard Exhibition Contract or any other contract between the parties or the rights and obligations of the parties thereunder.

The Board of Arbitration shall not entertain a claim or controversy unless the same arises under a contract containing provisions for arbitration substantially in accord with the said Arbitration Clause, excepting with the written consent of both parties to such claim or controversy.

[fol. 124] Members of the Film Board of Trade shall not be required to proceed as provided in paragraph three of Rule IV of these Rules and regulations unless the decision or award of the Board of Arbitration determines a claim or controversy arising out of

(1) A contract which contains or incorporates by reference all of the numbered Articles of the Standard Exhibition Contract filed with the Motion Picture Producers & Distributors of America, Inc., identified by the signature of its President on March 1, 1926, or

(2) A contract bearing a date prior to the 1st day of April, 1926, the provisions of which are substantially in accord with the Uniform Exhibition Contract.

Rule III

Reference of Controversies to Board of Arbitration

1. Whenever possible members of the Film Board of Trade shall endeavor to settle claims and controversies with Exhibitors without resorting to arbitration.

2. Whenever a member shall be unable to settle a claim or controversy with an exhibitor arising under a contract containing the Arbitration Clause, such member shall notify the Secretary of the Film Board of Trade (located in the city out of which such exhibitor is served) that such member desires to submit the claim or controversy to the Board of Arbitration having jurisdiction thereof, advising the Secretary of the name and address of the exhibitor and the nature of the controversy. The Secretary shall thereupon give written notice to the member, the exhibitor, the local Exhibitors' Association and the Board of Arbitration that the controversy has been referred to the Board of Arbitration at the request of such member.

3. Likewise upon receipt by the Secretary of the Film Board of Trade of a notice from any exhibitor that such [fol. 125] exhibitor desires to submit to arbitration a controversy with a distributor arising under a contract containing the Arbitration Clause, the Secretary shall give written notice to the Exhibitor, the distributor, the local Exhibitors' Association and the Board of Arbitration hav-

ing jurisdiction, that the controversy has been referred to the Board of Arbitration at the request of the exhibitor.

4. Nothing herein contained shall be construed to prohibit the filing of claims or controversies by members or exhibitors directly with a Board of Arbitration having jurisdiction thereof, pursuant to the rules of procedure and practice adopted by such Board of Arbitration.

Each of the parties to a controversy submitted for arbitration shall have the right to one adjournment of the hearing thereof until the date of the next succeeding regular meeting of the Board of Arbitration by sending a written demand therefor at least three (3) days prior to the date fixed for the hearing of such controversy, addressed to the Secretary of the Board of Arbitration.

Rule IV

Enforcement of Decisions of Board of Arbitration

1. The Board of Arbitration shall frm time to time notify in writing the Secretary of the Film Board of Trade located in each city of which the exhibitor is served of (a) the name and address of each exhibitor who has been found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of such Board of Arbitration justifies distributors in requiring security in future dealings with such exhibitor; and (b) the maximum amount (not exceeding that speci- [fol. 126] fied in the Arbitration Clause) which each distributor may demand as security pursuant to such clause.

2. Upon receipt of such information, the Secretary of each such Film Board of Trade shall advise all members of such Film Board of Trade for their exclusive and confidential information (a) of the name and address of every exhibitor who shall have been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a de-

cision of such Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of the Board of Arbitration justified distributors in requiring security in future dealings with such exhibitor; and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor.

3. Subject to the provision of Rule II, on receipt of any such notice, each member having a contract (or representing a distributor having a contract) containing the Arbitration Clause with any such exhibitor shall demand payment by such exhibitor of such sum (not exceeding the maximum amount fixed by the Board of Arbitration as aforesaid) as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed to pay the amount of security so demanded by such distributor within the time specified shall proceed either (a) to terminate each contract with such exhibitor, or (b) to suspend service thereunder until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board, as the case may be. No member or distributor having so terminated, or suspended service under any contract with such exhibitor shall thereafter re- [fol. 127] instate or resume service under said contracts unless and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board.

4. The Board of Arbitration shall from time to time notify the Secretaries of the Film Boards of Trade specified in paragraph 1 of this Rule IV in writing of the name and address of each exhibitor previously found by the Board of Arbitration to have committed one or more of the acts specified in paragraph 1 of this Rule IV, who shall thereafter have submitted to arbitration, or shall have complied with the decision of the Board of Arbitration, or who shall have remedied the breach of contract which justified distributors in requiring security of such exhibitor, and

who shall in the opinion of such Board of Arbitration be entitled to be dealt with by distributors at their option without requiring security in such dealings. Upon receipt of any such information the Secretaries of the said Film Boards of Trade shall forthwith advise in writing all members of said Film Boards of Trade for their exclusive and confidential information of the name and address of every such exhibitor and of the findings or opinion of the Board of Arbitration in the premises, and thereupon each member or distributor having terminated any contract with such exhibitor or suspended service thereunder (as provided in paragraph 3 of this Rule IV) may reinstate such contract or resume service thereunder, as the case may be.

5. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' association of the name of each member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a de- [fol. 128] cision of the Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of the Board of Arbitration justifies such exhibitor in refusing to deal with such member or distributor. Upon receipt of such information the Secretary of the Film Board of Trade shall, from time to time, advise all members of the Film Board of Trade of the name of every member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of the Board of Arbitration justifies the exhibitor in refusing to deal with such member or distributor. Thereafter such member or distributor shall not be entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or distributor has submitted to arbitration or has compiled with the decision or award

of such Arbitration Board or remedied such breach of contract, as the case may be.

6. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association in writing of the name of each member or distributor represented by a member previously found to have committed one or more of the acts specified in paragraph 5 of this Rule IV, thereafter submitting to arbitration or having complied with the decision of the Board of Arbitration or having remedied the breach of contract of which such member or distributor had been found to have committed, as the case may be. Upon receipt of such information the Secretary of the Film Board of Trade shall advise in writing all members of the Film Board of Trade of the name of such member or distributor and of the findings or opinion of the Board of [fol. 129] Arbitration in the premises, and thereupon such member or distributor shall again be entitled to redress from such Board of Arbitration.

Rule V

These rules and regulations shall not be amended or repealed excepting by a vote of three-quarters of the members at a Special Meeting duly called for such purpose upon two weeks' written notice, which notice shall specify the amendment or repeal to be submitted at such Special Meeting, but no such amendment shall in anywise be in conflict with or modification of the rules and regulations specified in any contract referred to in Rule II hereof.

Exhibit F to Petition

Rules and Regulations Relating to Arbitration

December 1, 1926

Rule I

Election of Board of Arbitration

The Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of Trade

(called Distributors' representatives) and three of whom shall be proprietors or managers of theatres in the territory where the Film Board of Trade is located (called Exhibitors' representatives) provided, however, that in no event shall such Exhibitors' representatives be managers of theatres owned or controlled by Producers or Distributors.

Each of the three Distributors' representatives and two alternate Distributors' representatives shall be appointed by the members of the Film Board of Trade to serve for three months and thereafter until his successor is appointed. Each of the three Exhibitors' representatives and [fol. 130] two alternate Exhibitors' representatives shall be appointed by the local Exhibitors' association. If there is no local Exhibitors' association or if such association fails to appoint Exhibitors' representatives or alternates then the President of the Film Board of Trade shall request the President of the Chamber of Commerce of the City in which the Film Board of Trade is located or if there is no such Chamber of Commerce or if the President thereof fails to appoint then the Mayor of such city, to appoint the three Exhibitors' representatives and two alternate Exhibitors' representatives. Failing such appointment the designation of Exhibitors' representatives and alternates shall be made by the President of the Film Board of Trade. Each of the Exhibitors' representatives and alternates shall serve for three months and thereafter until his successor is appointed, provided that any Exhibitors' representative or alternate appointed otherwise than by the local Exhibitors' association shall be replaced by an Exhibitors' representative or alternate appointed by such Exhibitors' association as soon as such appointment is made.

No member of the Board of Arbitration shall hear or determine any case or controversy in which he has an interest, direct or indirect.

Upon written notice given to the Secretary of the Board of Arbitration at least one (1) week prior to the date fixed for the hearing of any controversy submitted for arbitration each of the parties to such controversy shall have the right to challenge not more than two members of the Board of Arbitration, in which case the Distributors' alternate

representative or representatives or the Exhibitors' alternate representative or representatives, as the case may be, [fol. 131] tion to hear and determine such controversy in place of the member or members thereof challenged.

In case of the refusal, disqualification, challenge or disability of any Distributor's representative to hear and determine any such controversy the remaining Distributor's representatives or representative shall appoint from the Distributor's alternate representatives a substitute for such Distributor's representative.

In case of the refusal, disqualification, challenge or disability of any Exhibitor's representative to hear and determine any such controversy the remaining Exhibitor's representatives or representative shall appoint from the Exhibitor's alternate representatives a substitute for such Exhibitor's representative.

In case of a tie vote a majority of the members of the Board of Arbitration shall appoint a seventh arbitrator, and if they are unable to so appoint a seventh arbitrator, then the Secretary of the Board of Arbitration shall request the President of the Chamber of Commerce of the city in which the Film Board of Trade is located, or if there is none or if he fails to appoint, then the Mayor of such city to appoint a seventh Arbitrator, who shall be neither a distributor nor exhibitor nor interested in the motion picture business.

Rule II

Powers of Board of Arbitration

The Board of Arbitration shall have general power, after a thorough and impartial hearing of any dispute or controversy, (1) to determine such dispute or controversy, (2) to make findings thereon, (3) to direct what shall be done by either or both parties with respect to the matter in dispute, and (4) in the event of the failure of the exhibitor to submit to arbitration or to comply with the award or in the event [fol. 132] the exhibitor has been found to have committed such a breach of contract as in the opinion of the board justifies distributors represented by members of Film Boards of Trade in requiring security in future dealings with the exhibitor, to fix the maximum amount (not exceed-

ing that specified in the Arbitration Clause of the Standard Exhibition Contract) which each such distributor may demand as security pursuant to said Arbitration Clause.

It shall adopt its own rules of procedure and practice, which shall provide for reasonable notice to the parties of the time and place of the hearing and of the nature of the dispute, afford the parties an opportunity to be heard in person or by counsel and to submit evidence.

The findings, determination and directions of the Board of Arbitration upon such controversy shall be conclusive and binding upon the parties thereto.

In any controversy submitted to a Board of Arbitration upon the complaint of a Distributor which is determined in favor of the Exhibitor the Board of Arbitration may in its discretion include in its decision or award an award of a sum to be paid by the Distributor to the Exhibitor not to exceed the cost to the Exhibitor of railroad transportation from and return to the city or town in which the Exhibitor's theatre is located and an additional sum not to exceed $10 provided the Exhibitor has attended the hearing.

The Board of Arbitration shall not have power or authority to adopt or apply any rule which shall be at variance with any of the provisions of the Standard Exhibition Contract or any other contract betwen the parties or the rights and obligations of the parties thereunder.

The Board of Arbitration shall not entertain a claim or controversy unless the same arises under a contract containing provisions for arbitration substantially in accord with the said Arbitration Clause, excepting with the written consent of both parties to such claim or controversy.

[fol. 133] Every dispute or controversy must be submitted for determination to the Board of Arbitration within one year after the date of the breach of contract or of the act of omission or commission out of which such dispute or controversy shall have arisen. A dispute or controversy shall be deemed submitted when a written statement thereof is delivered to the Secretary of the Board of arbitration. A claim or controversy which cannot be submitted for arbitration because of the limitations of time prescribed in this paragraph may not be introduced as a counterclaim.

Members of the Film Board of Trade shall not be required to proceed as provided in paragraph three of Rule

IV of these Rules and Regulations unless the decision or award of the Board of Arbitration determines a claim or controversy arising out of

(1) A contract which contains or incorporates by reference all of the numbered Articles of the Standard Exhibition Contract filed with the Motion Picture Producers & Distributors of America, Inc., identified by the signatures of its President on March 1, 1926, or

(2) A contract bearing a date prior to the 1st day of April, 1926, the provisions of which are substantially in accord with the Uniform Exhibition Contract.

Rule III

Reference of Controversies to Board of Arbitration

1. Whenever possible members of the Film Board of Trade shall endeavor to settle claims and controversies with Exhibitors without resorting to arbitration.

2. Whenever a member shall be unable to settle a claim or controversy with an exhibitor arising under a contract containing the Arbitration Clause, such member shall notify the Secretary of the Film Board of Trade (located in the city out of which such exhibitor is served) that such mem- [fol. 134] ber desires to submit the claim or controversy to the Board of Arbitration having jurisdiction thereof, advising the Secretary of the name and address of the exhibitor and the nature of the controversy. The Secretary shall thereupon give written notice to the member, the exhibitor, the local Exhibitors' Association and the Board of Arbitration that the controversy has been referred to the Board of Arbitration at the request of such member.

3. Likewise upon receipt by the Secretary of the Film Board of Trade of a notice from any exhibitor that such exhibitor desires to submit to arbitration a controversy with a distributor arising under a contract containing the Arbitration Clause, the Secretary shall give written notice to the exhibitor, the distributor, the local Exhibitors' Association and the Board of Arbitration having jurisdiction, that the controversy has been referred to the Board of Arbitration at the request of the exhibitor.

4. Nothing herein contained shall be construed to prohibit the filing of claims or controversies by members or exhibitors directly with a Board of Arbitration having jurisdiction thereof, pursuant to the rules of procedure and practice adopted by such Board of Arbitration.

Each of the parties to a controversy submitted for arbitration shall have the right to one adjournment of the hearing thereof until the date of the next succeeding regular meeting of the Board of Arbitration by sending a written demand therefor at least three (3) days prior to the date fixed for the hearing of such controversy, addressed to the Secretary of the Board of Arbitration.

Rule IV

Enforcement of Decisions of Board of Arbitration

1. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade located in each city out of which the exhibitor is served of [fol. 135] (a) the name and address of each exhibitor who has been found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration; and (b) the maximum amount (not exceeding that specified in the Arbitration Clause) which each distributor may demand as security pursuant to such clause.

2. Upon receipt of such information, the Secretary of each such Film Board of Trade shall advise all members of such Film Board of Trade for their exclusive and confidential information (a) of the name and address of every exhibitor who shall have been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration, and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor.

3. Subject to the provision of Rule II, on receipt of any such notice, each member having a contract (or represent-

ing a distributor having a contract) containing the Arbitration Clause with any such exhibitor shall demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such [fol. 136] distributor shall proceed to suspend service under each such contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a period of ten days such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended service under any such contract with such exhibitor shall thereafter resume service under any such contract unless and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board. Upon the happening of either of such events service under such contract shall be promptly resumed by such member or distributor.

4. The Board of Arbitration shall from time to time notify the Secretaries of the Film Boards of Trade specified in paragraph 1 of this Rule IV in writing of the name and address of each exhibitor previously found by the Board of Arbitration to have committed one or more of the acts specified in paragraph 1 of this Rule IV, who shall thereafter have submitted to arbitration, or shall have complied with the decision of the Board of Arbitration. Upon receipt of any such information the Secretaries of the said Film Boards of Trade shall forthwith advise in writing all members of said Film Boards of Trade for their exclusive and confidential information of the name and address of every such exhibitor, and thereupon each member or distributor having suspended service under any such contract with such exhibitor (as provided in paragraph 3 of this Rule IV) shall resume service thereunder.

5. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association of the name of each member and distributor represented by a member found by the Board of Arbitration (1) to have [fol. 137] refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall from time to time, advise all members of the Film Board of Trade of the name of every member and distributor represented by a member found by the Board of Arbitration (a) to have refused to submit to arbitration a controversy arising under a contract containing the Abritration Clause, or (b) to have refused to comply with a decision of the Board of Arbitration. Thereafter such member or distributor shall not be entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or distributor has submitted to arbitration or has complied with the decision or award of such Arbitration Board.

6. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association in writing of the name of each member or distributor represented by a member previously found to have committed one or more of the acts specified in paragraph 5 of this Rule IV, thereafter submitting to arbitration or having complied with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall advise in writing all members of the Film Board of Trade of the name of such member or distributor, and thereupon such member or distributor shall again be entitled to redress from such Board of Arbitration.

Rule V

These rules and regulations shall not be amended or repealed excepting by a vote of three-quarters of the members at a Special Meeting duly called for such purpose upon

[fol. 138] two weeks' written notice, which notice shall specify the amendment or repeal to be submitted at such Special Meeting, but no such amendment shall in anywise be in conflict with or modification of the rules and regulations specified in any contract referred to in Rule II hereof.

EXHIBIT G TO PETITION

Rules of Arbitration

May 1, 1928

Rule I

Election of Board of Arbitration

1. The Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of Trade (called Distributors' representatives) and three of whom shall be proprietors or managers of theatres in the territory where the Film Board of Trade is located (called Exhibitors' representatives) provided, however, that in no event shall such Exhibitors' representatives be managers of theatres owned or controlled by producers or distributors.

2. Each of the three Distributors' representatives and two alternate Distributors' representatives shall be appointed by the members of the Film Board of Trade. Each of the Exhibitors' representatives and two alternate Exhibitors' representatives shall be appointed by the local Exhibitors' association. If there is no local Exhibitors' Association or if such Association fails to appoint Exhibitors' representatives or alternates then the President of the Film Board of Trade shall request the President of the Chamber of Commerce of the City in which the Film Board of Trade is located or if there is no such Chamber of Commerce or if the President thereof fails to appoint then the [fol. 139] Mayor or other chief executive of such city, to appoint the three Exhibitors' representatives and two alternate Exhibitors' representatives. Failing such appointment the designation of Exhibitors' representatives and

alternates shall be made by the then President of the American Arbitration Association from among exhibitors operating theatres in the territory wherein such Board of Arbitration is located who shall not be managers of theatres owned or controlled by producers or distributors.

3. Each of the Exhibitors' representatives and alternates and each of the Distributors' representatives and alternates shall serve for one month and thereafter until their respective successors are appointed, provided that any Exhibitors' representative or alternate appointed otherwise than by the local Exhibitors' Association shall be replaced by an Exhibitors' representative or alternate appointed by such Exhibitors' association as soon as such appointment is made.

4. No member of the Board of Arbitration shall hear or determine any case or controversy in which he has an interest, direct or indirect.

5. Upon written notice given to the Secretary of the Board of Arbitration at least seven (7) days prior to the date fixed for the hearing of any controversy submitted for arbitration each of the parties to such controversy shall have the right to challenge not more than two members of the Board of Arbitration, in which case the Distributors' alternate representative or representatives or the Exhibitors' alternate representative or representatives, as the case may be, shall act as a member or members of the Board of Arbitration to hear and determine such controversy in place of the member or members thereof challenged.

6. In case of the refusal, disqualification, challenge or disability of any Distributor's representative to hear and determine any such controversy the remaining Distributor's representatives or representative shall appoint from the [fol. 140] Distributor's alternate representatives a substitute for such Distributor's representative.

In case of the refusal, disqualification, challenge or disability of any Exhibitor's representative to hear and determine any such controversy the remaining Exhibitor's representatives or representative shall appoint from the Exhibitor's alternate representatives a substitute for such Exhibitor's representative.

7. In case of a tie vote a majority of the members of the Board of Arbitration shall appoint a seventh arbitrator, and if they are unable to so appoint a seventh arbitrator, then the Secretary of the Board of Arbitration shall request the President of the Chamber of Commerce of the city in which the Film Board of Trade is located, or if there is none or if he fails to appoint, then the Mayor or other chief executive of such city to appoint a seventh arbitrator, who shall be neither a distributor nor exhibitor nor interested in the motion picture business.

Rule II

Powers of Board of Arbitration

1. The members of the Board of Arbitration shall at each meeting thereof designate from among their number a chairman whose duty and authority as chairman shall be strictly limited to maintaining order to the end that all proceedings before the Board of Arbitration shall be conducted speedily and with decorum.

2. The Board of Arbitration shall have general power, after a thorough and impartial hearing of any dispute or controversy, (1) to determine such dispute or controversy, (2) to make findings thereon, (3) to direct what shall be done by either or both parties with respect to the matter in dispute, and shall fix the maximum amount (not exceeding that specified in the arbitration clause of the Standard Ex- [fol. 141] hibition Contract) which each such distributor may demand as security pursuant to said arbitration clause in the event of the failure of the exhibitor to submit to arbitration or to comply with the award.

3. It shall adopt its own rules of procedure and practice, which shall provide for reasonable notice to the parties of the time and place of the hearing and of the nature of the dispute, afford the parties an opportunity to be heard in person or by counsel and to submit evidence.

4. The findings, determination and directions of the Board of Arbitration upon such controversy shall be conclusive and binding upon the parties thereto.

5. In any controversy submitted to a Board of Arbitration upon the complaint of a distributor which is determined in favor of the exhibitor the Board of Arbitration may in its discretion include in its decision or award an award of a sum to be paid by the distributor to the exhibitor not to exceed the cost to the exhibitor of railroad transportation from and return to the city or town in which the exhibitor's theatre is located and an additional sum not to exceed $10 provided the exhibitor has attended the hearing.

6. The Board of Arbitration shall not have power or authority to adopt or apply any rule which shall be at variance with any of the provisions of the Standard Exhibition Contract or the rights and obligations of the parties thereunder.

7. The Board of Arbitration shall not entertain a claim or controversy unless the same arises under any contract other than those mentioned in paragraphs (a), (b) and (c) of this Rule, excepting with the written consent of both parties to such claim or controversy.

8. Every dispute or controversy must be submitted for determination to the Board of Arbitration within nine (9) months after the date of the breach of contract or of the act of omission or commission out of which such dispute or con- [fol. 142] troversy shall have arisen. A dispute or controversy shall be deemed submitted when a written statement thereof is delivered to the Secretary of the Board of Arbitration. A claim or controversy which cannot be submitted for arbitration because of the limitations of time prescribed in this paragraph may not be introduced as a counterclaim.

9. Members of the Film Board of Trade shall not proceed as provided in paragraph three of Rule IV of these Rules unless the decision or award of the Board of Arbitration determines a claim or controversy arising out of

(a.) A contract which contains or incorporates by reference all of the numbered articles of the Standard Exhibition Contract filed with the Motion Picture Producers & Distributors of America, Inc., identified by the signature of its President on March 1, 1926, or

(b.) A contract bearing a date prior to the 1st day of April, 1926, the provisions of which are substantially in accord with the Uniform Exhibition Contract, or

(c.) A contract which contains or incorporates by reference all of the numbered articles of the Standard Exhibition Contract filed on May 1, 1928, with the American Arbitration Association, identified by the signatures of the Contract Committee appointed by the 1927 Motion Picture Trade Practice Conference.

Rule III

Reference of Controversies to Board of Arbitration

1. Whenever possible distributors and exhibitors shall endeavor to settle claims without resorting to arbitration.

2. Whenever a member of the Film Board of Trade shall be unable to settle a claim or controversy with an exhibitor arising under a contract containing the arbitration clause, such member shall notify the Secretary of the Film Board of Trade (located in the city out of which such exhibitor is served) that such member desires to submit the claim or [fol. 143] controversy to the Board of Arbitration having jurisdiction thereof, advising the Secretary of the name and address of the exhibitor and the nature of the controversy. The Secretary shall thereupon give written notice to the member, the exhibitor, the local Exhibitors' Association and the Board of Arbitration that the controversy has been referred to the Board of Arbitration at the request of such member and of the time and place of hearing.

3. Likewise upon receipt by the Secretary of the Film Board of Trade of a notice from any exhibitor that such exhibitor desires to submit to arbitration a controversy with a distributor arising under a contract containing the arbitration clause, the Secretary shall give written notice to the exhibitor, the distributor, the local Exhibitors' Association and the Board of Arbitration having jurisdiction, that the controversy has been referred to the Board of Arbitration at the request of the exhibitor.

4. In case either party to a controversy referred to the Board of Arbitration shall demand a hearing thereon in less than five days for reasons deemed by the Board of Arbitration sufficient, the notice provided for in paragraphs 2 and 3 hereof may be dispensed with and in such case twenty-four hours' written notice of the time and place of the hearing shall be given to the parties to the controversy, the local Exhibitors' Association, and the members of the Board of Arbitration.

5. Nothing herein contained shall be construed to prohibit the filing of claims or controversies by members or exhibitors directly with the Board of Arbitration having jurisdiction thereof, pursuant to the rules of procedure and practice adopted by such Board of Arbitration.

6. Each of the parties to a controversy submitted for arbitration shall have the right to one adjournment of the hearing thereof until the date of the next succeeding regular meeting of the Board of Arbitration by sending a written [fol. 144] demand therefor at least three (3) days prior to the date fixed for the hearing of such controversy, addressed to the Secretary of the Board of Arbitration.

7. If either of the parties to a controversy submitted for arbitration fails to appear at the time fixed for the hearing thereof, the default of such party shall be noted. In case of a default in appearance of the complainant, the complaint shall be dismissed, and in case of a default in appearance of the respondent, the Board of Arbitration shall hear the evidence of the complainant and shall make an award to the same effect as if both parties had been present.

The Board of Arbitration may, in its discretion, upon application setting forth reasonable grounds, made within seven days after an award has been rendered upon the default of either party upon such terms and conditions as may be deemed just.

Rule IV

Enforcement of Decisions of Board of Arbitration

1. The Secretary of the Board of Arbitration shall from time to time notify in writing the Secretary of the Film

Board of Trade located in each city out of which the exhibitor is served of (a) the name and address of each exhibitor who has been found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration; and (b) the maximum amount (not exceeding that specified in the arbitration clause) which each distributor may demand as security pursuant to such clause.

2. Upon receipt of such information, the Secretary of each such Film Board of Trade shall advise all members of such Film Board of Trade for their exclusive and confidential information (a) of the name and address of every ex-[fol. 145] hibitor who shall have been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the arbitration clause, or (2) to have refused to comply with a decision of such Board of Arbitration, and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor.

3. Subject to the provision of Rule II, on receipt of any such notice, each member having a contract (or representing a distributor having a contract) containing the arbitration clause with any such exhibitor shall demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such distributor shall proceed to suspend service under each such contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a

period of ten days such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended service under any such contract with such exhibitor shall thereafter resume service under any such contract unless and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board. Upon the happening of either of such events serv-[fol. 146] ice under such contract shall be promptly resumed by such member or distributor.

4. In case either party to a dispute or a controversy arising under a Standard Exhibition Contract submitted to the Board of Arbitration shall claim that a right or liability, under the same or another Standard Exhibit Contract, exists or may exist (because of the facts involved in such controversy) against or in favor of some other party, not then a party to the controversy but a party to a Standard Exhibition Contract with the distributor a party to such dispute or controversy, the Board of Arbitration on application of either party shall, by written notice to such effect, make such other party a party to the controversy, and an award, if made in favor of or against such other party, may be enforced as provided in these Rules.

5. The Secretary of the Board of Arbitration shall from time to time notify the Secretaries of the Film Boards of Trade specified in paragraph 1 of this Rule IV in writing of the name and address of each exhibitor previously found by the Board of Arbitration to have committed one or more of the acts specified in paragraph 1 of this Rule IV, who shall thereafter have submitted to arbitration, or shall have complied with the decision of the Board of Arbitration. Upon receipt of any such information the Secretaries of the said Film Boards of Trade shall forthwith advise in writing all members of said Film Boards of Trade for their exclusive and confidential information of the name graph 3 of this Rule IV) shall resume service thereunder. and address of every such exhibitor, and thereupon each member or distributor having suspended service under any such contract with such exhibitor (as provided in paragraph 3 of this Rule IV) shall resume service thereunder.

6. The Secretary of the Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' [fol. 147] Association of the name of each member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall, from time to time, advise all members of the Film Board of Trade of the name of every member and distributor represented by a member found by the Board of Arbitration (a) to have refused to submit to arbitration a controversy arising under a contract containing the arbitration clause, or (b) to have refused to comply with a decision of the Board of Arbitration. Thereafter such member or distributor shall not be entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or distributor has submitted to arbitration or has complied with the decision or award of such Arbitration Board and there shall be added to the amount of such award a sum equal to ten per cent (10%) thereof for each thirty days after the time fixed for compliance therewith that such member or distributor fails or refuses to comply with such award, provided that demand for the payment of such award shall have been made by registered mail upon the home office of such distributor.

7. The Secretary of the Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association in writing of the name of each member or distributor represented by a member previously found to have committed one or more of the acts specified in paragraph 6 of this Rule IV, thereafter submitting to arbitration or having complied with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of [fol. 148] the Film Board of Trade shall advise in writing all members of the Film Board of Trade of the name of such member or distributor, and thereupon such member

or distributor shall again be entitled to redress from such Board of Arbitration.

Rule V

Damages

1. The amount of damages which the Board of Arbitration shall award for "bicycling", "switching" or any other unauthorized exhibition of a photoplay shall be determined and limited as provided in Section 25 of the Copyright Law of the United States provided that if the Board of Arbitration shall find that any such act was not wilfully done then such damages shall be fixed at not less than one hundred dollars ($100).

2. If in a controversy in which a claim is made against a distributor for damages for failure or delay in delivering any photoplay, and the distributor's defense to such claim is that such failure or delay was caused by reason of the failure or delay of another exhibitor in returning the print of such photoplay, or in forwarding it to the complaining exhibitor as directed by the distributor the Board of Arbitration shall postpone the hearing of such controversy and shall direct that such other exhibitor be brought in and made a party thereto. If the Board of Arbitration shall find that the complaining exhibitor is entitled to damages on account of such claim the Board of Arbitration shall make an award in favor of such exhibitor against the distributor. If the Board of Arbitration shall find that such failure or delay was caused by such other exhibitor, the Board of Arbitration at the same time shall make an award in favor of the distributor against such other exhibitor for the same amount of damages awarded to the complaining exhibitor against the distributor.

[fol. 149]

Rule VI

Amendments

These rules and regulations shall not be amended or repealed by the Boards of Arbitration or the Film Boards of Trade without the approval first obtained of the beforenamed Contract Committee.

[fols. 150-153] In United States District Court

[Title omitted]

Defendants' Answer to Petition

The joint and several answer of Paramount Famous Lasky Corporation, Metro-Goldwyn-Mayer Distributing Corporation, First National Pictures, Inc., Universal Film Exchanges, Inc., United Artists Corporation, Fox Film Corporation, Pathe Exchange, Inc., F. B. O. Pictures Corporation, Vitagraph, Inc., and Educational Film Exchanges, Inc. (called in the Petition and this answer "defendant distributors"), Motion Picture Producers and Distributors of America, Inc., Film Board of Trade of Albany, Atlanta Film Board of Trade, New England Film Board of Trade, Buffalo Film Board of Trade, Montana Film Board of Trade, Charlotte Film Board of Trade, Chicago Film Board of Trade, Cincinnati Film Board of Trade, [fol. 154] Cleveland Film Board of Trade, Dallas Film Board of Trade, Denver Film Board of Trade, Des Moines Film Board of Trade, Detroit Film Board of Trade, Inc., Indianapolis Film Board of Trade, Kansas City Film Board of Trade, Los Angeles Film Exchange Board of Trade, Milwaukee Film Board of Trade, Memphis-Little Rock Film Board of Trade, Minneapolis Film Board of Trade, Inc., New Haven Film Board of Trade, New Orleans Film Board of Trade, New York Film Board of Trade, Oklahoma City Film Board of Trade, Omaha Film Board of Trade, Inc., Philadelphia Film Board of Trade, Pittsburgh Film Board of Trade, Portland Film Board of Trade, St. Louis Film Board of Trade, Inter-Mountain Film Board of Trade of Salt Lake City, San Francisco Film Exchange Board of Trade, Northwest Film Board of Trade, Inc., and Washinton Film Board of Trade and the officers and members of said defendant Film Boards of Trade, to the petition filed in the above entitled cause by the United States of America.

Part A—Admissions and Denials

These defendants answering so much and such parts of said petition as they are advised it is material and necessary for them to answer, say:

I

They admit the allegations contained in the paragraphs of Part I of the Petition the said paragraphs being entitled respectively:

Defendant Distributors (Pet., pp. 1-3);

Defendant Association (Pet., p. 3);

Defendant Film Boards of Trade (Pet., pp. 4-17).

[fol. 155] II

Referring to Part II of the Petition (Pet., p. 17) entitled "Purpose of Petition" defendants deny that they, or any of them, have engaged, or are engaging or will engage in a conspiracy in restraint of interstate trade and commerce in motion picture films.

III

They admit the allegations contained in the paragraphs of Part III of the Petition entitled "Description of Industry" (Pet., pp. 18-21), the said paragraphs being entitled respectively:

1. Production of Motion Pictures (Pet., p. 18);
2. Exhibition Life of Films;
3. Classification of Motion Pictures;
4. Complete Program Distribution (Pet., p. 19);
5. Channel of Distribution;
6. Motion Picture Theatres;
7. Film Exchanges (Pet., p. 20);
8. Control by defendants.

IV

They admit the allegations contained in the paragraphs of Part IV of the Petition entitled "Scope of Authority of Members of Film Boards" (Pet., pp. 21-24) except that referring to paragraph 14 (Pet., p. 23) defendants aver that the authority of each exchange manager to participate in activities of a Film Board of Trade is limited to such acts as are in accordance with the Rules and Regulations agreed upon by the defendant distributors and other dis-[fol. 156] tributors and annexed to the Petition as a part thereof marked Exhibit "G" (Pet., pp. 135-146).

V

They admit, except as qualified in this Part V of this Answer, the allegations contained in the paragraphs of Part V of the Petition entitled "Interstate Commerce in Motion Picture Films" (Pet., pp. 24-34) the said paragraphs being entitled respectively:

1. Location of Laboratories;
2. Distribution of Positive Prints to Exchanges;
3. Contracts for Exhibition of Motion Pictures (Pet., p. 26) except that defendants aver that the allegations contained in this paragraph of the Petition apply only to the period following the adoption of the Uniform Exhibition Contract;
4. Contracts for Groups of Motion Pictures (Pet., p. 27);
5. Future Deliveries under Group Contracts (Pet., p. 27);
6. News Reels (Pet., p. 28);
7. Spot Booking Contracts;
8. Shipments from Laboratories to Exchanges (Pet., p. 29);
9. Replacement Shipments (Pet., p. 30);
10. Release and Fixing of Playdates;
11. Distribution from Exchanges to Theatres (Pet., p. 31);

[fol. 157] 12. Interstate Circulation of Prints (Pet., p. 32);

13. Interchange of Prints between Exchanges (Pet., p. 34).

VI

They admit the allegations contained in Part VI of the Petition entitled "Continuity of Interstate Commerce" (Pet., pp. 34-35).

VII

They admit the allegations contained in Part VII of the Petition entitled "Distributors and Exchange Managers Engaged in Interstate Commerce" (Pet., pp. 35-36) except that defendants aver that the flow and course of interstate trade and commerce therein deseribd has been under the direction and control of said exchange managers subject to the instructions received by said exchange managers from their home or principal offices and that the said exchange managers have never had and do not now have

authority to direct or control such trade and commerce except in obedience to instructions from their principal offices.

VIII

Referring to Part VIII of the Petition (Pet., p. 36) defendants deny that they or any of them have engaged or are engaging in a conspiracy in restraint of interstate trade and commerce in motion picture films. They deny that defendant distributors or any of them have carried on, or are carrying on, their interstate trade and commerce in motion picture films in accordance with and pursuant to an understanding and agreement between them or any [fol. 158] of them to coerce and to require every exhibitor of motion picture films in the United States to submit to arbitration any question or dispute with any member of any defendant Film Board of Trade arising under any contract licensing the exhibitor of a motion picture or of motion pictures; or to coerce and to require every exhibitor of motion pictures in the United States to surrender and to waiver the right to have any question or dispute with any member of any defendant Film Board of Trade arising under any contract licensing the exhibition of a motion picture or of motion pictures, settled and determined by any court having jurisdiction of such question or dispute; or to coerce and to require every exhibitor of motion pictures in the United States to comply with any award rendered against him in any arbitration proceeding without recourse or appeal to any court having jurisdiction of such question or dispute.

They deny that since in or about July, 1922, or since any other time defendant distributors or any of them have carried on their interstate trade and commerce in motion picture films in accordance with and/or pursuant to an understanding, agreement, or conspiracy between defendant distributors or any of them to carry out and to accomplish any unlawful purpose.

IX

Referring to Part IX of the Petition (Pet., pp. 38-50) defendants admit that defendant distributors prepared, adopted and agreed to use the contracts attached to the

Petition marked Exhibits "A," "B" and "C," but deny that they did so pursuant to any unlawful understanding, agreement or conspiracy.

[fol. 159] Defendants admit that from April, 1923, until March 1, 1926, defendant distributors contracted to license the exhibition of pictures in motion picture theatres substantially only by contracts containing all the terms and provisions of the Uniform Exhibition Contract (Pet., Exhibit A), and from March 1, 1926, to May 1, 1928, only by contracts containing all the terms and provisions of the Standard Exhibition Contract dated March 1, 1926 (Pet., Exhibit B), and that since May 1, 1928, the said distributors have contracted and are now contracting only by contracts containing all the terms and provisions of the Standard Exhibition Contract, dated May 1, 1928 (Pet., Exhibit C), but deny that defendant distributors, or any of them in so contracting did so or are now doing so pursuant to any unlawful understanding, agreement or conspiracy.

Defendants aver that the summary of said Uniform Exhibition Contract and of said Standard Exhibition Contract as set forth in subparagraphs 2 a, b, c, d, e and f of the Petition (pp. 40-41), is not a full and complete statement of the terms and conditions of said contracts and respectfully refer the Court to a true and correct copy of said contracts which will be produced at the trial.

Referring to paragraph 3 of Part IX of the Petition (pp. 41-42) entitled "Organization of Film Boards" defendants admit that the defendant distributors on or about April, 1923, caused their exchange managers to organize and become members of the Film Boards of Trade; that since April, 1923, they have maintained said Boards of Trade with the co-operation of the 77 other distributors named in the Petition and have caused and requested each of their exchange managers to be a member of the Board or Boards located in the territory served by his exchange, and to [fol. 160] participate in the activities of such Board or Boards, but defendants deny that they or any of them have acted or are acting pursuant to, in accordance with, or to carry out any unlawful understanding, agreement or conspiracy.

Defendants admit that the defendant distributors, on or about April, 1923, and the later dates mentioned in the

Petition, prepared and caused each Film Board of Trade to adopt and operate in accordance with the By-laws of Film Boards of Trade Relating to Arbitration and Rules and Regulations Relating to Arbitration attached to the Petition and marked Exhibits "D," "E," "F" and "G" and that each Film Board of Trade has operated in accordance therewith and that each member of each Film Board of Trade has conducted the interstate trade and commerce in motion picture films of his principal in conformity with the provision of the uniform contract and the By-laws, Rules and Regulations Relating to Arbitration since on or about April, 1923, but they deny that this has been in pursuance of, or accordance with, or to carry out any unlawful understanding, agreement or conspiracy.

Defendants admit that each Film Board of Trade will continue to operate under and in accordance with the Rules of Arbitration dated May 1, 1928 (Pet., Exhibit G, p. 135), and that each member of each Film Board of Trade will continue to conduct the interstate trade and commerce of his principal in conformity with the provisions of the Standard Exhibition Contract dated May 1, 1928, and of said Rules of Arbitration dated May 1, 1928, but they deny that this will be in accordance with or to carry out any unlawful understanding, agreement or conspiracy.

[fol. 161] Defendants aver that the summary of the provisions of Rules of Arbitration as set forth in subparagraphs 5 a, b, c, d, e, f and g, of the Petition (pp. 45-47), is not a full and complete statement of said Rules of Arbitration and respectfully refer the Court to a true and correct copy of said Rules of Arbitration which will be produced at the trial.

Referring to subparagraph 6 (Pet., p. 47), entitled "Supplemental Agreements for Enforcing Awards" defendants deny that since in or about July, 1922, or since any other time said exchange managers or any of them have carried on the interstate trade and commerce in motion picture films of their principals and the businesses and affairs of the defendant Film Boards of Trade in accordance with and pursuant to understandings and agreements between the members of the Film Boards of Trade which have supplemented and exceeded the provisions of the Uniform and

Standard Exhibition Contracts and the By-laws and Rules relating to Arbitration and the enforcement of awards. Defendants admit that defendant distributors and the defendant Association have instructed the members of the Film Boards of Trade not to enter into or carry out any understanding or agreement with each other which supplemented and exceeded the provisions of the Uniform and Standard Exhibition Contract and the By-laws, Rules and Regulations relating to Arbitration and to the enforcement of awards which are made part of said contracts.

Defendants deny every allegation contained in the Petition not hereinbefore specifically admitted.

[fol. 162] Part B—Defense

For a further defense and by way of explanation and justification of the contracts, rules and regulations annexed to, and the acts of defendants complained of in the Petition, defendants set forth in this Answer the facts peculiar to the motion picture industry, the manner in which the Standard Exhibition Contract and Arbitration Plan came into being, the need in the industry for a plan or system or arbitration, the reason for adopting the rules relating to the enforcement of decisions of the Boards of Arbitration, the purpose, nature and effect of such rules, the intent of defendants and the end sought to be attained by them, the beneficient results accomplished by several years' use of the arbitration plan, and so defendants aver:

X

Competition in the Industry

At all the times mentioned in the Petition there has been, and there is today, keen competition throughout the United States in the distribution of motion pictures (hereinafter termed films or pictures) by the defendant distributors and by other distributors engaged in the motion picture business. At all such times the defendant distributors have been, and they are today, competing actively with each other, and with all other distributors, in the distribution of their pictures throughout the United States.

There are approximately 22,000 motion picture theatres in the United States (Pet., p. 19).

Each defendant distributor maintains branch offices called exchanges in the principal centers of distribution [fol. 163] in the United States for the purpose of facilitating the distribution of its pictures to exhibitors (Pet., p. 20). Except as stated in the Petition, each defendant distributor maintains such a branch office in each of the 32 cities named in the Petition and in each of such cities other distributors, known as "regional" distributors, maintain offices for the same purpose; the large majority of such other distributors and the places where they maintain offices are stated in the Petition (pp. 4-17), which names a total of 77 such regional distributors and specifies the Film Boards of Trade of which each is a member.

The states and parts of states in which each branch office operates, that is, the states and parts of states in which the branch managers of such branch offices solicit the exhibition business of the theaters located therein and distribute the pictures of their several companies, are also stated in the Petition. These approximately coincide with the territory in which the Film Board of Trade located in the same city operates. In each of such states and parts of states, all of the distributors distributing pictures therein, including the 10 defendant distributors, the 77 regional distributors named in the Petition and other distributors not named, are actively competing with each other in the distribution and for the exhibition of their pictures and they have been actively competing with each other at all the times mentioned in the Petition.

For many years last past it has been the custom for each distributor in the United States to announce in the spring of each year its program of pictures for the 12 months' period (termed "season" in the trade) commencing the following fall, the pictures to be released (which in the trade means made available for exhibition) at approxi- [fol. 164] mately regular intervals during such period or season. The announcement usually describes each picture to be produced, gives its title, names the star and the featured players in the picture, the director, the author, and the play or story from which it is derived (Pet., p. 25).

Immediately after the announcement of its program of pictures, each distributor proceeds to solicit and conclude as many contracts as possible for the exhibition of such pictures with the thousands of exhibitors who own or oper-

ate the 22,000 theatres in the United States. Each contract is a matter of negotiation and bargaining between the distributor and the exhibitor. The great majority in number of the contracts of each distributor are solicited by the branch managers or by their salesmen, but the acceptance of each application for a contract is subject to the approval of the home or principal office of each distributor.

There is today and there has been for some years an over-production of pictures, that is, more pictures have been produced than could be readily contracted for. The average theatre in the United States exhibits under 200 features during the course of a year or season, whereas more than 750 new feature pictures were produced in each of the seasons 1926-1927 and 1927-1928 and over 800 have been announced for the current season (1928-1929). There is and has been an overproduction of short subjects, these amounting to about 2,500 short subjects in each of the said seasons and about 3,000 have been announced for this season. The average theatre uses 350 short subjects and comedies in the course of a year. During the 1927-1928 season 624 news reels were produced; for the current season 624 have been announced. The average theatre uses 104 news reels each season.

[fol. 165] In negotiating and bargaining for contracts with exhibitors (the operators of theatres) in his territory, each branch manager finds all the branch managers and salesmen of the other distributors who are doing business in his territory competing with him on contracts for feature pictures, short subject pictures, comedies, specials and news reels. Similarly, when an operator of a motion picture theatre requires an individual motion picture for a date in the immediate future for which date no pictures included in his group contracts are available or needs a picture to complete his program each distributor who has a picture in his branch office available for such exhibition competes for the business and seeks through its branch manager and salesmen to conclude a contract with such exhibitor. This is known in the trade as "spot booking." (Pet., p. 28.)

Referring to Paragraphs VI and VII of the Petition and to the "continuous flow and course of interstate trade and commerce in motion picture films" in the United States therein described, defendants aver that at all the times

mentioned in the Petition there has been and there is now in respect of such trade and commerce the keenest and most unrestricted competition between and among the defendant distributors and other distributors of pictures, all of whom have, during the said period, competed, and do now compete, with each other without reservation, restraint or restriction whatsoever and the defendants aver that the contracts and understandings complained of in the Petition have not at any time restrained, limited or diminished and do not now restrain, limit or diminish in any manner whatsoever such competition or deprive the public of any of the advantages which flow or are derived from competition.

[fol. 166] Defendants further aver, on information and belief, that there is no industry in the United States in which more active competition has prevailed during the past five years and does now prevail than in the motion picture business in all branches of production, distribution and exhibition.

There is today, and there has been at all times mentioned in the Petition, the keenest competition between producers of motion pictures in obtaining literary material for pictures and in securing the services of players, directors, camera men, technicians, scenario writers, artists, designers and authors, each producer striving to obtain, against the competition of all other producers, the best material, players, directors, authors, camera men, artists and others possessed of special talent in any of the various branches of the motion picture industry.

XI

The Use of Written Contracts in the Industry; the Manner in Which the Standard Exhibition Contract Came into Being

From the beginning of the motion picture industry the agreement between the distributor and exhibitor has been in the form of a written contract. In this respect the motion picture industry probably differs from every other industry.

In respect to each picture, the exhibitor (the owner or operator of a theatre), acquires a license under copyright

to exhibit the picture at a specified theatre for a limited number of days stated in the contract (Pet., p. 84). He acquires nothing more than the right to use for a limited time the property of the distributor which must be returned promptly to the owner at the conclusion of its use for a like [fol. 167] use by other exhibitors who have acquired a similar right in the same picture. The motion picture print moves either on a circuit from place to place, being exhibited at each place, or back and forth between distributor and exhibitors.

As a rule, the exhibitor contracts with a distributor for a group of pictures, varying in number from 20 to 60 (Pet., p. 27), to be produced and released or made available for exhibition at regular intervals over a period of one year. The contract is negotiated and concluded prior to the production of most of the pictures and before their release date, except in case of spot bookings of single pictures. Therefore it is necessary to provide in the contract for the selection or designation of playdates as the pictures become available for exhibition. This arrangement requires a clearly drawn provision and cannot be trusted to verbal agreement. Other subjects, among others, on which complete agreement between the parties is necessary are matters relating to the time and place of exhibition, the rental and payment therefor, the delivery and return of prints, the protection and run periods, loss and damage to prints, description of photoplays, exhibition and advertising, delay in or prevention of performance and admission prices.

For these reasons it has always been the accepted practice in the industry to put all exhibition agreements in the form of written contracts, all persons interested, exhibitors and distributors, recognizing from the beginning of the industry that otherwise there would be continuous misunderstanding in the dealings between the exhibitor and the distributor.

An exhibitor uses feature pictures (5 reels or more, con- [fol. 168] stituting the backbone of a program), short subjects (2 reels), comedies (2 reels) and news reels (1 reel). It is and has been the custom for many years to contract separately for each of these classes of pictures.

No distributor in the course of a year distributes sufficient feature pictures to supply the average exhibitor's program. The average exhibitor uses under 200 feature

pictures and 350 short subjects (news reels, comedies and novelties). No distributor releases more than 75 feature pictures while some release only 12 annually. Therefore the average exhibitor contracts in the course of a year with from 5 to 15 distributors who actively compete for the business as heretofore stated. While the average exhibitor signs 25 to 50 contracts, many exhibitors sign more than 50 contracts in the course of a year.

The description given above has applied to the business as carried on for many years.

Prior to 1922, the contracts of the various distributors contained many dissimilarities. For example, referring to the subject "Selection or designation of playdates" (Pet., p. 87) which is one of the most important and, at the same time, most complicated of the matters covered by the contract, this was not uniform as between the different distributors. If an exhibitor had contracts with 10 different distributors, he found it necessary to consult each contract as a picture under it became available in order to comply exactly with the provisions in that contract relating to the designation of play dates. Failure to do so resulted in breaches of contract. For this reason exhibitors requested distributors to use a uniform form of contract.

Accordingly in the summer of 1922, the defendant distributors, the defendant association, Motion Picture Pro- [fol. 169] ducers & Distributors of America, Inc., and committees or representatives appointed by various exhibitor associations, appreciating the loss of time and money to the entire industry and the hardships of exhibitors resulting from the many dissimilarities in non-competitive matters existing in the long and complicated contracts of the different distributors in the United States, and desirous of saving such loss of time and money in order to reduce the cost of distribution and exhibition of pictures in the United States, set about the preparation of a uniform or standard form of contract, the adoption of which would not in any manner diminish competition between distributors, but would help to eliminate some of the confusion in the industry arising out of these dissimilarities in matters of detail in intricate contracts.

With this purpose, defendant distributors, by committees and counsel for many months conferred and negotiated

with each other and with committees and counsel of various exhibitors' associations, National and State, and with individual exhibitors, in an effort to reach some form of contract which would be acceptable to distributors and exhibitors alike. The form of contract which is annexed to the Petition as Exhibit A (Pet., pp. 52-64) entitled "Uniform Exhibition Contract" was finally arrived at as the form acceptable to more persons interested than any other form and it was adopted and used by defendant distributors and some other distributors beginning with the spring of 1923.

Defendants aver that while the "Uniform Exhibition Contract" was not perfect and it was later improved upon, its adoption by defendants and other distributors in the United States marked a signal advance in the industry. It was approved by various leading exhibitor organizations in the United States which organizations included in [fol. 170] their membership a great number of the theatres in the United States.

As the Uniform Exhibition Contract became known in the industry other distributors gradually adopted it until its use became general. Distributors used it as a form of contract to which each distributor added such clauses as it deemed appropriate for the purpose of carrying out its particular business and rental policies and its method of distribution of feature or short subject pictures, or news reels.

In 1925 and the early part of 1926 distributors and exhibitors joined in conferences, the object of which was to improve the form of contract (Exhibit A, Pet., pp. 52-64) in the light of experience which had been gained in using it for several years. Representatives appointed by the following exhibitor organizations participated in such conferences:

Motion Picture Theatre Owners of America, a national organization;

Theatre Owners' Chamber of Commerce, an organization of owners of theatres in the City of New York and northern New Jersey;

Motion Picture Theatre Owners of New Jersey;

Motion Picture Theatre Owners of Washington, D. C., and Maryland;

Motion Picture Theatre Owners of the Northwest, including in its membership the states of Minnesota, Wisconsin, Montana, North and South Dakota;

Motion Picture Theatre Owners of Michigan;

Motion Picture Theatre Owners of Kansas and Missouri;

Motion Picture Theatre Owners of South Illinois and Indiana;

[fol. 171] Motion Picture Theatre Owners of Texas;

Motion Picture Theatre Owners of the State of New York, including the Buffalo and Albany Zones.

Also representative exhibitors not members of any organization participated in the conferences.

None of the exhibitors' representatives above mentioned were affiliated with producers or distributors, that is to say, they were not operators or owners of theatres controlled by or affiliated with a producer or distributor. After many days of protracted conferences the representatives of the distributors and the representatives of the exhibitors on February 6, 1926, reached an agreement upon a form of contract which they named "Standard Exhibition Contract" which is annexed to the Petition as a part thereof marked Exhibit B (Pet., pp. 64-82). They also agreed upon the "Rules and Regulations Relating to Arbitration" which were referred to in Clause "Twentieth" of the Standard Exhibition Contract and made a part of the Contract (Pet., p. 77). These "Rules and Regulations" are annexed to the Petition as a part thereof marked Exhibit E (Pet., pp. 117-126).

They further agreed that the new form of contract should be put into use immediately.

The agreement above mentioned was signed by the exhibitors and agreed to by the President of the defendant Association representing the distributors and is annexed as a part of this Answer marked Exhibit 1. The agreement states that the contract agreed upon is mutual and contains many improvements and that it is the purpose of those signing the agreement sympathetically to interpret the provisions of the contract, to carry it out and to aid in efforts to improve it.

[fol. 172] With the concurrence of those participating in the conference a statement reporting the agreement was

issued to the press which was given wide publicity and was printed in all papers and periodicals which report happenings in the motion picture world. A copy of such statement is annexed hereto as a part hereof marked Exhibit 2.

At the same time the exhibitors' committee appointed an Advisory Committee to consult with the organization representing the distributors relative to still further improving the contract. The members of this Advisory Committee were the President of the Motion Picture Theatre Owners of America, the President of the Theatre Owners Chamber of Commerce, the President of the Motion Picture Theatre Owners of the Northwest and E. V. Richards, an exhibitor operating a large number of theatres in the South and not a member of any exhibitors' organization.

This committee thereafter conducted negotiations with the distribtors because of the complaint of exhibitors that some of the distributors had adopted clauses supplementing the Standard Contract which were construable as inconsistent with its provisions. An agreement was reached in May, 1926, whereby the use of these conflicting clauses was withdrawn by the distributors. A copy of the agreement as signed by the exhibitors' representatives and by the President of the defendant Association, the Motion Picture Producers and Distributors of America, Inc., representing the distributors, is attached hereto as a part hereof marked Exhibit 3.

Thereafter from March 1, 1926, to May 1, 1928, the defendant distributors and other distributors in the United States used the Standard Exhibition Contract and con- [fol. 173] ducted their several businesses in conformity therewith and in conformity with the Rules and Regulations Relating to Arbitration.

In September, 1927, the Federal Trade Commission invited those engaged in producing, distributing and exhibiting motion pictures in the United States to attend a Trade Practice Conference in New York City in October for the purpose of participating in deliberations relating to the elimination from the industry of any unfair methods of competition which may have been practiced in the industry. Exhibitors in each of the 31 zones who were not affiliated with any producer or distributor were invited to elect or appoint two delegates to represent them at the

conference, neither of whom should be an exhibitor affiliated with a producer or distributor. Practically 100 per cent of those engaged in the production, distribution and exhibition of motion pictures were represented at the conference which convened October 10 to 15, 1927, inclusive, and was presided over by Honorable Abram F. Myers, Federal Trade Commissioner. The producers were represented by 43 delegates; the distributors were represented by 25 delegates in person and all others by proxy or power of attorney. The unaffiliated exhibitors were represented by 66 delegates and the affiliated exhibitors by 59 delegates.

At this conference a resolution was passed by an overwhelming majority with only one vote opposing, expressing the desire of all branches of the industry that a uniform exhibition contract be used, declaring the arbitration of disputes arising out of the contract to be a fair trade practice and directing the immediate designation of a committee of nine to institute a study of the provisions of the Standard Exhibition Contract and the rules for the arbitration provided for therein and to develop improvement [fol. 174] in such contract and in such rules for arbitration, the contract and rules to be ready for use for the season of 1928-29. A copy of the above mentioned resolution is annexed hereto as a part of this Answer marked Exhibit 4.

After consideration by the Federal Trade Commission, the foregoing resolution was approved by the Commission in a statement issued by the Commission on May 25, 1928, as Rule One of the group of rules approved by the Commission as stating fair trade practices.

Pursuant to this resolution the Contract Committee was appointed before the close of the conference, three members chosen by the unaffiliated exhibitor delegates, three by the producer-distributor delegates, and three by the affiliated exhibitor delegates, the latter three members of the committee being without right to vote by direction of the resolution.

The Contract Committee met in Chicago, in January and February, 1928, and considered the contract and the rules of arbitration at protracted conferences continuing four-

teen days and finally unanimously agreed upon the Standard Exhibition Contract which is annexed to the Petition as Exhibit C (Pet., pp. 82-107), and unanimously agreed upon the "Rules of Arbitration," dated May 1, 1928, which are annexed to the Petition as Exhibit G (Pet., pp. 135-146). An authenticated copy of the contract signed by the Contract Committee was filed with the American Arbitration Association (Pet., pp. 38, 139).

The Contract Committee agreed that the Rules of Arbitration should not be amended thereafter without the approval first obtained of the Contract Committee and the Contract Committee amended Rule VI of the Rules of Arbitration, to so provide (Pet., p. 146).

[fol. 175] Since on or about May 1, 1928, which marked the beginning of the period for contracting for the exhibition of the pictures on its advance program for the twelve-months season commencing in the fall of 1928, each defendant distributor and substantially every other distributor in the United States, has contracted to license the exhibition of its motion pictures only by contracts containing all the articles and clauses of the Standard Exhibition Contract, Exhibit C (Pet., p. 82), and each of the defendants, including each of the defendant distributors, defendant Film Boards of Trade and the members thereof, has conducted its business, trade and commerce in motion picture films in conformity with the said Rules of Arbitration dated May 1, 1928.

By the use of a standard form of contract much confusion and misunderstanding have been eliminated from the industry and it has been made much easier for exhibitors to do business.

The first clause of the contract (Pet. p. 83) is a warranty as to form; the distributor warrants that the contract with the exhibitor contains all of the numbered articles of the "Standard Exhibition Contract"; the distributor also warrants that any clauses in addition appearing upon the schedule have been approved by the Contract Committee appointed at the 1927 Motion Picture Trade Conference and that any additional clauses appearing upon a Rider, if any rider is annexed to the contract, are not inconsistent with any of such numbered articles. The unaffiliated ex-

hibitor representatives on the Contract Committee requested the insertion of the warranty clause.

[fol. 176]

XII

The Need and Reason for Arbitration

Between 500,000 and 750,000 contracts for the exhibition of pictures are entered into annually by the distributors with the owners and operators of the 22,000 theatres in the United States. Approximately the same number of contracts were executed annually prior to 1922. Under these contracts there are more than 11,000,000 deliveries of pictures each year from distributor to exhibitor. Substantially each of the 11,000,000 deliveries is the delivery of a picture under a contract for exhibition which was entered into between the distributor and the exhibitor before the production of the picture or before its release date except in the case of "spot booking" contracts of which there are comparatively few. In respect of each picture it is necessary for the distributor and the exhibitor to come to an agreement on the playdate subsequent to the execution of the contract excepting in comparatively few instances where playdates are specified in the contract. Failing to reach such agreement the provisions of the contract for the selection or designation of playdates must be resorted to (Pet., pp. 87-90). As each contract usually licenses the exhibition of a group of 20 to 60 pictures (Pet., p. 27), each contract after execution involves from 20 to 60 subsequent agreements relating to playdates each of which playdates is arranged in the manner provided for in the contract. Therefore these 500,000 to 750,000 contracts involve in fact upwards of 11,000,000 subsequent agreements. To each of these 11,000,000 subsequent agreements the other provisions of the Standard Exhibition Contract apply, including, among others, the provisions relating to [fol. 177] time and place of exhibition, payment of rental, "protection" and "run," delivery and return of prints, loss and damage to prints, description and titles of photoplays, exhibition and advertising, warranty as to advertising, delay in or prevention of performance, taxes, mini-

mum admission charge, racial or religious matter, arbitration and waiver (Pet., pp. 84-95).

In this vast industry countless disputes occur in the course of each year in the performance of these 11,000,000 agreements. Most of these disputes are, and have always been, settled by negotiation between the parties interested. But in regard to many thousands of claims and controversies arising each year the parties thereto have been unable to reach a settlement.

In the motion picture industry it is essential that controversies be determined quickly, that is to say, within a short time after the controversy arises. Promptness of decision is almost as important as fairness of decision. This fact is recognized throughout the industry. The reason is found in the nature of a motion picture. The rental value of a motion picture is greatest when it is new, that is immediately after its release date or availability for exhibition; as the release date is departed from the rental and exhibition value of the picture rapidly diminish. Approximately fifty per cent of the total receipts of a distributor is obtained from the first 1,200 out of a probable 10,000 showings (Pet., p. 20). Therefore, if the exhibition is prevented by long continued litigation both the exhibition and the rental value of the picture will disappear before the litigation is terminated.

Moreover, as each contract usually licenses the exhibition of from 20 to 60 pictures, to be released and exhibited [fol. 178] at approximately regular intervals (Pet., p. 27), an unsettled controversy relating to the delivery of one picture upsets the application of the contract to the other pictures specified in the contract. The mutual obligations of the parties in respect of the other pictures are usually dependent upon the decision of the controversy. What those obligations are cannot be determined until the liability in respect of the matter in controversy is fixed.

Delay in the determination of the dispute is costly to distributor and exhibitor alike. Even if the distributor loses the controversy a prompt decision may enable him to relicense the film at a theatre in another place, but if the adverse decision is delayed the distributor loses that possibility because the rental value of a stale picture is negligible.

On the other hand, a tardy decision against the exhibitor forces the exhibitor to take and pay for a picture which has no longer any drawing power in his theatre and which will be practically a total loss since the exhibition of an out of date picture is likely to impair the reputation of his theatre. If the decision is prompt even though against him the exhibitor may take and exhibit the picture while it still has value and drawing power.

The distribution of motion pictures is a complicated industry and sui generis. It is wholly different from every other industry. It does not have to do with the buying and selling of commodities; it is not concerned with the transfer of titles to things where the interest of the seller is terminated. It deals with licenses and license fees. The distributor grants the exhibitor the right to use the property of the distributor for a limited time. A particular exhibitor acquires only the use of the property for one day or a few days at a specified place. Moreover, other ex- [fol. 179] hibitors acquire rights of use in the identical property, the rights of some being prior, known in the trade as "first run," and the rights of others being subsequent to the use of a particular exhibitor, being known in the trade as second or subsequent runs. A breach by either the distributor or the exhibitor of the contract between them often affects another exhibitor. Tardiness or negligence in specifying a playdate may delay the subsequent runs of the picture at other theatres and thus lead to controversies between the distributor and the operators of such other theatres. Prompt determination of this particular kind of controversy is of the utmost importance.

Prior to 1922 many hundreds of lawsuits throughout the United States were commenced each year by distributors and exhibitors, all arising out of controversies relating to the performance or non-performance of contracts for the leasing and exhibition of motion picture films. A great number of such lawsuits were pending in 1922. This litigation greatly increased the cost of distribution and exhibition of pictures and made for much bad feeling in the industry.

Experience had demonstrated the value of arbitration to the industry and therefore at the conferences in 1922, in regard to a uniform contract, the suggestion that there be

inserted in the contract a provision for arbitration met with approval. A comprehensive plan covering the entire United States was prepared and embodied in Clause Nineteenth of the contract (Pet., p. 61) and in rules and regulations which were made part of the contract (Pet., p. 108).

The purpose of these defendants who participated in the formation of the arbitration plan and subsequently adopted [fol. 180] and are now using it was and is to establish a method of settling differences between distributor and exhibitor that will diminish litigation and promote good will, that will be prompt, inexpensive and effective, and fair and equitable in that distributor and exhibitor will have equal representation on a board of arbitration composed of men experienced in the peculiar problems of the industry.

XIII

(a) The Arbitration Clause in the Contract (Pet., p. 96)

The parties agree that before either shall resort to any court to determine or protect the legal rights of either under the contract, each shall submit to the Board of Arbitration, in the city in which is situated the exchange of the Distributor from which the Exhibitor is served, all claims and controversies, arising under the contract, for determination. The contract recites that the Board of Arbitration is established pursuant to Rules of Arbitration filed with the American Arbitration Association identified by the signatures of the contract committee appointed at the 1927 Motion Picture Trade Practice Conference. The determination of any claim or controversy is to be pursuant to such Rules of Arbitration (Pet., p. 96). The parties agree to abide by and comply with any decision and award of the Board of Arbitration in any such proceeding.

If the exhibitor refuses to submit to arbitration any claim or controversy or to abide by and forthwith comply with [fol. 181] any decision or award of such Board of Arbitration the Distributor may demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties, payment by the Exhibitor of an additional sum not exceeding $500 under each contract: such sum is to be retained by the Distributor until the complete performance of all such contracts

and then applied against any sums finally due or against any damages determined by the Board of Arbitration to be due to the Distributor, the balance, if any, to be returned to the Exhibitor. If the Exhibitor does not pay the sum demanded within 7 days the distributor may suspend service under the contract until the sum is paid or terminate the contract.

If the distributor refuses to submit to arbitration or to comply with any award, the exhibitor may terminate the contract and also may terminate any other contract between the distributor and exhibitor. In addition the distributor is barred from presenting any claim against any exhibitor to such Board of Arbitration and is barred from obtaining redress from such Board on any claim against any exhibitor until the distributor has complied with such decision (Pet., p. 98).

The contract declares that the provisions relating to arbitration shall be construed according to the laws of New York. The New York Arbitration Act, in effect April 19, 1920, declares that a provision in a written contract to settle by arbitration a controversy thereafter arising between the parties to the contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

[fol. 182] (b) Rules Relating to the Set Up of the Boards of Arbitration (Pet., p. 135)

The Board of Arbitration consists of 6 persons. Three are branch managers of distributors who are members of the Film Board of Trade. Three are proprietors or managers of theatres in the territory where the Film Board of Trade is located. The former are called distributors' representatives, and the latter exhibitors' representatives. In no event may the exhibitors' representatives be managers of theatres owned or controlled by producers or distributors.

No member of the Board of Arbitration may hear or determine any case or controversy in which he has an interest, direct or indirect (Pet., p. 136).

The members of the Board of Arbitration serve one month and thereafter until their successors are appointed (Pet., p. 137). The distributors' representatives are ap-

pointed by the members of the Film Board of Trade, that is by the branch managers of the distributors doing business in the territory where the Film Board of Trade is located. The exhibitors' representatives are appointed by the local exhibitors' association or failing that by the President of local Chamber of Commerce or by the Mayor or chief executive of the city.

In every case that comes before a Board of Arbitration the three distributors' representatives sitting on the Board are competitors of the distributor whose controversy is to be decided by the Board on which they sit. They are branch managers who are either doing business and have contracts with the exhibitor before them or hope to do business and [fol. 183] conclude contracts with him. For the business of that particular exhibitor they are competing with each other and with the distributor who has the controversy with the exhibitor before them which controversy they (in co-operation with the three exhibitors' representatives) are to determine.

Each party to the controversy may challenge not more than two members of the Board of Arbitration.

In a case of a tie vote a seventh arbitrator is appointed by the six arbitrators.

The Board of Arbitration has power after a thorough and impartial hearing to determine the controversy, to make findings, to direct what shall be done by either or both parties with respect to the matter and to fix the maximum amount (not exceeding the amount specified in the Arbitration Clause of the Standard Exhibition Contract, namely $500) which each distributor may demand as security in the event of the failure of the exhibitor to submit to arbitration or to comply with the award (Pet., pp. 137-138).

The Board of Arbitration may not entertain a claim unless it arises under a contract containing the arbitration clause except with the written consent of both parties (Pet., p. 138).

The Board of Arbitration adopts its own rules of procedure and practice, which provide for reasonable notice to the parties of the time and place of the hearing and of the nature of the dispute, afford the parties an opportunity to be heard in person or by counsel and to submit evidence (Pet., p. 138).

The Board of Arbitration may not adopt any rule which is at variance with any of the provisions of the Standard Exhibition Contract or the rights and obligations of the [fol. 184] parties thereunder (Pet., p. 138).

If either party demands a hearing in less than five days for reasons deemed by the Board of Arbitration sufficient, the hearing may be held on twenty-four hours' written notice to the parties of the time and place of the hearing (Pet., p. 140).

Each party to the controversy has the right to one adjournment of the hearing upon certain conditions (Pet., p. 140).

The findings, determination and directions of the Board of Arbitration upon the controversy are conclusive and binding upon the parties thereto (Pet., p. 138).

XIV

The Results Attained under Arbitration

The plan of arbitration has been in successful use throughout the United States for over four years. During this period the Boards of Arbitration have operated fairly and equitably. Distributors and exhibitors alike have benefited from the use of a prompt, economical and efficient method for the determination of their controversies. The decisions have been made by men experienced in the everyday problems of the industry. The use of the plan has made for harmony in the industry and promoted goodwill between exhibitors and distributors.

Under this plan there have been filed and disposed of, during the 4 calendar years 1924 to 1927, 50,006 cases involving a total sum of $11,200,298. During this period 22,243 awards were made after hearing aggregating $5,505,832; 19,655 claims, involving $3,735,138, were settled [fol. 185] amicably by the parties before the date of hearing; 4,066 claims were withdrawn; 1,451 claims were dismissed for want of jurisdiction or because they were improperly filed or for other reasons. At the end of 1927 there were pending 1,095 claims.

In these four years there were only 98 claims in which a seventh arbitrator was required as in all the other cases

the Boards composed of 3 distributors and 3 exhibitors were able to agree on the decision.

Attached hereto as a part hereof marked Exhibit 5 is a summary of the report of the Boards of Arbitration in the United States for 1927, 1926, 1925 and 1924.

XV

Credit Advanced by Distributors to Exhibitors; the Distributors' Need for Reasonable Protection

The subject of a very large majority of the complaints of distributors against exhibitors has always been the failure of the exhibitor to pay for and exhibit the pictures contracted for. As heretofore stated the distributor usually contracts with the exhibitor before the picture is produced. The distributor proceeds to the expense of production relying on the contracts with exhibitors which he has secured. If an exhibitor refuses to take a picture when it is released and available for exhibition the distributor usually suffers a large or total loss of rental or earnings from the picture in the territory covered by such exhibitor's theatre. This is because it is the custom of theatres to "book" or contract for their picture programs months in advance. Therefore, when an exhibitor refuses to take a picture, after [fol. 186] it is released, which he has contracted to take, the distributor is unable to relicense the picture in a theatre competing with the exhibitor's theatre for the reason that the available time of the competing theatre is already contracted for with other distributors. By the time the competing theatre has an open date the picture is stale and has lost its normal drawing power so that it commands for rental or license fee only a small fraction of what the rental was when first released and available for the exhibitor who has refused to exhibit it.

Appreciating these facts the unscrupulous exhibitor buys more desirable pictures than he has available time in the season within which to show them, in order to prevent a competing theatre contracting for those pictures. Overbuying means buying more pictures than there are playdates available at the theatre. Exhibitors secure pictures from many distributors, for no distributor has a supply of

pictures sufficient to complete a theatre's program. A distributor has no means of knowing whether an exhibitor is overbuying because the competing distributors do not advise each other what contracts with exhibitors they have secured. Such information has never been available in the industry. In fact, distributors have always jealously guarded from each other all information respecting their contracts with exhibitors.

Overbuying has always cause more loss to distributors than any other trouble in the industry. There are more than 10,000 instances each year of this form of breach of contract, that is, claims of distributors arising out of the failure of exhibitors to pay for and exhibit pictures which they have contracted to take. In 1927 there were 11,721 such claims on contracts involving rentals aggregating [fol. 187] $3,215,854.87. This figure does not include claims of this kind settled without resort to arbitration. The average claim on these 11,721 uncompleted contracts amounted to $274.

When a distributor signs a contract with an exhibitor for pictures which are to be delivered in the future the distributor in fact advances a form of credit to the exhibitor because after the contract is executed the distributor is precluded from contracting with a neighboring or competing theatre for the same run of the same picture. He is precluded by the terms of the contract from doing so. During the life of the contract the distributor agrees to give the exhibitor "protection" for the period specified in the contract against the exhibition of any of the photoplays named in the contract at theatres in the immediate neighborhood or vicinity of exhibitor's theatre (Pet., pp. 85-86). If the exhibitor later repudiates the contract the distributor will not be able to sell the pictures in that vicinity because the competing theatres will be completely booked. Therefore the amount of rental involved in the contract, which represents the entire earning power in that particular neighborhood of all the pictures named in the contract, is a form of credit which the distributor has given the exhibitor and the distributor acts in reliance on that credit.

The picture is the property of the distributor. The distributor gives possession of this property to the exhibitor for a limited use for which the exhibitor pays a rental. It

is a fragile inflammable object easily injured if not carefully handled by the exhibitor. The value of the film (the positive print) is property which, in the ordinary case, the distributor has let the exhibitor take into his possession without having received from the exhibitor any security [fol. 188] that he will handle distributor's property carefully and return it in good condition. This is another instance of a form of credit advanced by the distributor to the exhibitor.

In 1927 there were 264 claims on account of damaged prints filed with the Boards of Arbitration, the average claim amounting to $145. The foregoing figure does not include claims of this sort settled by the parties without resort to arbitration.

The exhibitor sometimes shows the picture at a theatre not named in the contract, for instance, at two theatres when he has paid for the right of exhibition at only one theatre. In the trade this is called "bicycling" or "switching". It is another form of abuse of the property of the distributor which has been entrusted to an exhibitor for a specified use and no other. There were 157 such claims filed with the Boards of Arbitration in 1927. In almost every instance of bicycling or switching the distributor is put in the position of being made liable for damages to other exhibitors because of the breach of their contracts in respect to run or protection.

It has always been the practice in the industry for the exhibitor to pay the license fee or rental for each picture several days in advance of the date of shipment of the picture from the distributor's exchange and it is so provided in the Standard Exhibition Contract (Pet., p. 85). Many times, however, in the course of a year each distributor, as a matter of accommodation to an exhibitor, ships a picture before payment, shipping it C. O. D. or open account. In many such cases exhibitors have nevertheless not accepted and paid for the picture and the express charges and it has been returned at the cost of the distributor. In 1927, 1,518 [fol. 189] claims were filed with the Arbitration Boards on account of pictures which were not paid for when delivered C. O. D. or on open account, aggregating $332,854.46 in value. The average claim amounted to $219.

Failure to return a picture promptly to the distributor, thereby causing the distributor to lose the rental provided for under contract with the next exhibitor scheduled to exhibit it, losing a print, subrenting it to another exhibitor, exhibiting the picture more days than specified in the contract, or giving a bad check, are other violations of the contract which cause loss to the distributor. In 1927, 431 bad checks, averaging $75 each, were subjects of that number of claims before the Arbitration Boards. Failure to account with the distributor where the contract calls for payment of a percentage of the gross receipts as the license fee for the use of the picture is another cause of many complaints.

The term "good credit" in the motion picture business as applied to the exhibitor means more than his ability to pay film rentals. An exhibitor may have money in the bank and yet be a bad risk and an undesirable customer. Has he respect for contractual obligations? Will he take, pay for and exhibit, months hence, pictures which he contracts today to take and pay for when they are released months hence? Will he handle carefully and protect from injury the valuable and fragile property of the distributor while it is entrusted to his care? Will he show the picture only at the theatre specified in the contract or is he likely to "bicycle" the picture secretly to a second theatre and exhibit it there without accounting to the distributor for the stolen use of his property? Will he return the picture promptly to the distributor, meaning immediately after the [fol. 190] exhibition, in order that the distributor may deliver it to the exhibitor having the next right of exhibition? Will he account honestly to the distributor where the contract calls for payment of a percentage of the gross receipts? The answers to these, and other questions, relating to the use of the distributor's property and the performance of his contractual obligations determine whether the exhibitor is a good risk or his credit is bad. These are more important to the distributor than the size of the exhibitor's bank account, for they determine the character of the exhibitor. Upon them depends a substantial percentage of the distributor's total revenue.

The description given above applied with even greater force to conditions in the industry in 1922. Prior to 1922, 35 to 40 per cent. of the total amount of rentals of pictures

contracted for were never paid. From the causes above enumerated and other causes, not mentioned, the distributors still suffer losses amounting to millions of dollars each year.

Prior to 1922 the distributors endeavored to secure protection by inserting in their contracts one or more of a variety of clauses which are now no longer used owing to the adoption of the Standard Exhibition Contract which does not contain any of them. A practice universally followed was to demand payment by the exhibitor of a large advance deposit at the time he signed the contract, amounting to 25% or more of the aggregate rentals to be paid under the contract. A clause in such contracts permitted the application of the deposit on account of any sums due the distributor or on account of any damage cause the distributor by the exhibitor's breach of the contract. Before 1922 the distributors held under these clauses over $5,000,000 of exhibitors' money paid in the form of advance de- [fol. 191] posits and held every season mostly in New York. In the event of the failure of the distributor, the exhibitor was likely to lose his deposit. A number of state legislatures enacted statutes whose purpose was to protect the exhibitors' deposits but these statutes were not effective in protecting the exhibitor. In a leading case the Nebraska Statute, typical of the other laws, was held unconstitutional.

Advance deposits are no longer customary in the industry and are demanded only occasionally in the case of exceptional pictures. At this time not more than 250,000 is held during the season by all distributors in the form of advance deposits. Because of the Standard Exhibition Contract and the Arbitration Plan provided for in the contract, it is no longer necessary for the distributor to ask for an advance deposit as security for the performance of the contract.

Some distributors prior to 1922 inserted in their contracts a clause authorizing the distributor to terminate the contract if the exhibitor defaulted in the performance or observance of any term or condition contained in the contract or in the performance of any other contract between the parties. Such contracts expressly authorized the dis-

tributor in such event to withhold delivery of any pictures, that is to suspend service, until the default was cured.

Other contracts in use before 1922 authorized the distributor to demand at any time an additional cash payment on account. For instance, if there was a dispute regarding a playdate, or a damaged or lost print, or any other matter, the clause empowered the distributor to demand a cash payment and to withhold pictures or terminate the contract if it was not paid.

[fol. 192] Such clauses as those above described created hard feeling and led to much litigation. The decision in each case, whether part of the deposit should be withheld by the distributor on account of an alleged breach of contract by the exhibitor or whether a cash payment should be demanded, or whether the delivery of pictures should be suspended or the contract should be terminated, rested with the distributor to whom the contract gave arbitrary power in these matters.

XVI

The Rules Relating to the Enforcement of the Decisions of the Boards of Arbitration

It was the common purpose of the distributors and exhibitors who were negotiating for a uniform contract in 1922 to do away with the causes of friction above described and as a means to that end to take from the distributors the arbitrary power, which, in cases of dispute, they had previously exercised under the clauses above enumerated to demand a cash payment of the exhibitor or to suspend service to him or to terminate the contract. At the same time it was recognized by all that in some cases the distributor needs and is entitled to protection in his dealings with the exhibitor. The problem was to devise a plan which would eliminate the objectionable clauses formerly used and yet would give the distributor reasonable protection in cases in which the credit he gives the exhibitor is abused or is likely to be abused.

Under the plan which was finally agreed to and put into operation under the Standard Exhibition Contract a distributor is no longer permitted to use the clauses which had been criticized for giving him arbitrary power to demand a

[fol. 193] cash deposit, to withhold delivery of pictures or to cancel the contract.

Under this plan if a distributor has a claim against or controversy with an exhibitor arising out of a contract between them, the distributor is compelled to submit the matter to the Arbitration Board which has jurisdiction. Even in cases of the unauthorized exhibition of copyrighted pictures known as "bicycling" and "switching", clear cases of violation of the copyright law in which, the court, in the absence of proof of actual damage, is required by the law to award a minimum of $250, the distributor is not permitted to commence a law suit. In no case may the distributor demand security, that is a cash deposit, from an exhibitor unless either (1) a claim has been presented to the Board of Arbitration having jurisdiction and (2) the Board, after a hearing with notice to both sides, has made an award in favor of the complaining distributor, and (3) the exhibitor has refused to pay the award, or the exhibitor has refused to arbitrate.

If the Board of Arbitration decides against the distributor the later is barred from demanding security and also from bringing a lawsuit.

If the award is in favor of the distributor and the exhibitor then pays the award, the distributor is barred from demanding security.

Only when an exhibitor has failed to pay an award rendered against him by a fair Board of Arbitration on the complaint of a distributor founded upon a breach of contract, or has refused to arbitrate, may a distributor demand security of an exhibitor.

The Board of Arbitration, by the Rules of Arbitration, is given the power to fix the maximum amount of security which the distributor may demand, when the exhibitor has failed to arbitrate or to comply with an award, subject to [fol. 194] the qualification that the Board may not fix an amount exceeding the maximum specified in the Standard Exhibition Contract, namely, $500 (Pet., p. 97).

The distributor is not permitted to demand an amount exceeding the maximum fixed by the Board. The Board usually fixes a maximum commensurate with the amount involved in the controversy but in no event over $500.

The Rules further restrict the amount of security the distributor may demand in that they provide that the sum

demanded shall not exceed the actual value of any print thereafter to be delivered under the contract plus the rental contracted to be paid therefor.

A feature picture ordinarily consists of 5 or more reels of positive film, each reel being about 1,000 feet in length. At the time of the adoption of the uniform contract in 1923 it was estimated that the damage to a distributor caused by the loss of a print was about 6 cents per linear foot or $60 per reel and $300 for the average feature picture, excluding any part of the cost of the negative print and the cost of production of the photoplay. This figure does not cover any part of the loss of rentals from any other exhibitors occasioned by the loss of or damage to the print. Colored positive prints cost a great deal more than 6 cents a foot.

The Uniform Exhibition Contract and Rules and Regulations relating to Arbitration adopted in 1923 established $500 as the maximum and $100 as the minimum amount which could be demanded by the distributor, the Board of Arbitration being given the authority in each case, to fix the maximum which the distributor might demand within these limits $500 to $100 (Pet., p. 62). In 1926 the minimum of $100 was eliminated with the result that no minimum was named in the Standard Exhibition Contract of 1926 or is named in the Contract of 1928 (Pet. p. 78 and p. 97). [fol. 195] The Boards of Arbitration in their awards frequently specify a maximum below $100. The rule was amended in 1926 to provide that the maximum amount which may be demanded by a distributor shall not exceed the value of a print plus the rental as above stated (Pet., p. 132).

In the average case the aggregate rental to be paid by the exhibitor for a group of 20 to 60 pictures specified in his contract greatly exceeds the replacement value of any particular print. In many contracts the rental for the group amounts to thousands of dollars and in nearly all contracts it amounts to hundreds of dollars. Therefore, the maximum security which may be demanded $500, is much less than the rental involved in many of the contracts.

In fixing the maximum the Board takes into consideration all surrounding facts, such as the character and location of the theatre, its seating capacity, its earnings or gross

receipt, whether it is a first run theatre, what it pays for pictures and other pertinent facts.

Under the plan of arbitration the industry has eliminated the provision formerly contained in the contracts of many distributors which permitted the distributor to suspend service or terminate the contract at will if the distributor claimed the exhibitor had violated the contract. The Rules now provide that the distributor may suspend service or terminate the contract only after the exhibitor has failed to pay the award and has also failed to pay a cash deposit or security. If the award is against the exhibitor and the latter does not pay the award a distributor may demand security the amount of which is limited as has been described above. If the exhibitor has not deposited the security demanded within 7 days the distributor suspends service [fol. 196] under the contract. If at the end of another period of 10 days the exhibitor has not put up the security the distributor may cancel the contract (Pet., p. 142). After suspension of service the distributor may not resume service unless the exhibitor either furnishes security or complies with the decision of the Arbitration Board. If the exhibitor does either of these two things (i. e., complies with the decision or furnishes security) the distributor is required by the rules to promptly resume service under the contract (Pet., p. 142).

The rules relating to the enforcement of the decisions of the Boards of Arbitration are part of the Rules of Arbitration and of the Standard Exhibition Contract and are summarized below:

1. The Secretary of the Board of Arbitration from time to time notifies in writing the Secretary of the Film Board of Trade located in each city out of which the exhibitor is served of (a) the name and address of each exhibitor who has been found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration; and (b) the maximum amount (not exceeding that specified in the arbitration clause) which each distributor may demand as security (Pet., p. 141).

2. Upon receipt of such information, the Secretary of the Film Board of Trade advises all members of such Film

Board of Trade for their exclusive and confidential information (a) of the name and address of every exhibitor who has been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the arbitration clause, or (2) to have refused to comply with a decision of such Arbitration [fol. 197] Board and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor (Pet., p. 141).

3. On receipt of any such notice, each member having a contract containing the arbitration clause with any such exhibitor demands payment by such exhibitor of such sum as in the judgment of such member is sufficient to protect such member in the performance of each contract with such exhibitor. Said sum may not exceed the actual value of any print thereafter to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case may exceed the maximum amount fixed by the Board of Arbitration as aforesaid. Thereafter each distributor to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such distributor proceeds to suspend service under each such contract until such exhibitor has furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a period of ten days such contract, at the option of the distributor, may then be canceled. No distributor having so suspended service under any such contract with such exhibitor may thereafter resume service under any such contract unless and until such exhibitor has furnished said security to such distributor or has complied with the decision of the Arbitration Board. Upon the happening of either of such events service under such contract must be promptly resumed by such member or distributor (Pet., p. 142).

4. The Secretary of the Board of Arbitration from time to time notifies in writing the Secretaries of the Film Boards of Trade, located in each city out of which the exhibitor is served, of the name and address of each ex- [fol. 198] hibitor previously found by the Board of Arbi-

tration to have refused to submit to arbitration or to comply with a decision, who has thereafter submitted to arbitration, or has complied with the decision of the Board of Arbitration. Upon receipt of any such information the Secretaries of the Film Boards of Trade forthwith advise, in writing, all members of said Film Boards of Trade for their exclusive and confidential information of the name and address of every such exhibitor, and thereupon each member or distributor having suspended service under any such contract with such exhibitor is required to resume service thereunder (Pet., p. 143).

5. The Secretary of the Board of Arbitration from time to time notifies in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitor's Association of the name of each member (distributor) found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade advises all members of the Film Board of Trade of the name of every member found by the Board of Arbitration (a) to have refused to submit to arbitration a controversy arising under a contract containing the arbitration clause, or (b) to have refused to comply with a decision of the Board of Arbitration. Thereafter such member (distributor) is not entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or dis- [fol. 199] tributor has submitted to arbitration or has complied with the decision or award of such Arbitration Board (Pet., p. 144).

6. The Secretary of the Board of Arbitration from time to time notifies in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association of the name of each member previously found to have refused to submit to arbitration or to comply with a decision, who has thereafter submitted to arbitration or complied with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film

Board of Trade advises in writing all members of the Film Board of Trade of the name of such member, and thereupon such member again is entitled to redress from such Board of Arbitration (Pet., p. 144).

XVII

Purpose of Defendants is to Obtain Reasonable Protection in Dealing with Irresponsible Exhibitors

The purpose of defendant distributors in agreeing upon, adopting and observing the rule that when an exhibitor has refused to comply with an arbitration award each distributor having a contract with such exhibitor shall demand security for the performance of its contract with such exhibitor was and is to obtain reasonable protection for the distributors in dealing with financially irresponsible or unscrupulous exhibitors (Rule IV, Pet., pp. 141-144). If the exhibitor has not the means to pay an arbitration award which has been based upon a breach of contract, distributors having contracts with such exhibitor need and should be given reasonable protection in respect of the credit which they have advanced him before they make [fol. 200] further deliveries of pictures to such exhibitor. If a distributor does not receive this protection it is proper that he should suspend service until he does receive it or cancel the contract. Cancellation of the contract will permit the distributor to make an effort to place the pictures elsewhere, but unless the contract is cancelled he cannot place the pictures elsewhere and he is forced to see the rental value of the pictures named in the contract disappear. For reasonable protection the distributor requires either security or the right to cancel the contract.

Immediately upon receipt of the security, which is limited to a reasonable amount by the rules summarized above, the distributor who has received it is required to go on with his contract. The rules do not permit a distributor to withhold service until all distributors demanding security have received it from the exhibitor. For instance, if an exhibitor has overbought, having, for example, contracted with 10 distributors when 6 or less contracts would have been sufficient, he may deposit the security demanded under such of the contracts as he elects to retain and he

may abandon the other contracts. Each of the distributors to whom he has given security is required to perform his contract regardless of the fact that the exhibitor has failed to make a deposit under other contracts.

If an exhibitor who has the means to do so has failed to pay an arbitration award because he wishes to litigate the award or if, for the same reason, he has defaulted at the arbitration hearing, he is making an election which will subject the distributor to long drawn out expense and trouble, thereby increasing the distributor's cost of doing business. The amount of security demanded of the exhibitor in such event being reasonable in amount and limited to [fol. 201] the particular need of the distributor as stated in the rules, the demand can have no coercive effect upon the exhibitor. If the exhibitor has the financial capacity to pay for the pictures which he has contracted to exhibit he will have no difficulty in complying with the demand to make a cash deposit, which averages less than the rentals for the pictures. If he has not financial capacity he will nevertheless continue to get credit and pictures provided only that he complies with the arbitration award. The security or cash deposit gives the distributor nothing more than reasonable protection in respect of the credit, as described in this Answer, which the distributor advances the exhibitor in the ordinary course of business.

The agreement between the distributors does not go beyond the reasonable requirements made necessary by the conditions of the industry.

When the contract has been performed the security is returned to the exhibitor except such amount as may have been applied against sums due under the contract or against any damages determined by the Board of Arbitration to be due to the distributor (Pet., p. 97).

At any time the exhibitor may avoid payment of security by complying with the arbitration award.

The rule regarding the demand for security has always been and is now being observed by defendants reasonably and fairly and without occasioning hardship to any one and for the purpose of diminishing the large financial losses incurred by defendants in their dealings with financially irresponsible exhibitors or with exhibitors who are negligent or careless in the performance of their contractual obligations.

Any exhibitor can get pictures without depositing any security whatsoever provided only that he complies with [fol. 202] the award of the Board of Arbitration. At any time he may nullify the demand for a cash deposit by paying the award.

No exhibitor, except one looking for an unfair or dishonest advantage, has cause to object to the rules for the enforcement of decisions of the Boards of Arbitration hereinabove described.

The great majority of the exhibitors in the United States heartily approve of the use and operations of the Arbitration Plan. The number of theatres in the United States has increased greatly during the period in which the Arbitration Plan has been in operation and their total financial investment accordingly. In 1922 there were about 14,000 theatres, whereas today there are over 22,000.

The Plan benefits all honest exhibitors because of the economic saving and because it prevents many unfair practices on the part of dishonest exhibitors which give the latter an unfair advantage, when practiced, over honest exhibitors. It provides the small exhibitor with an inexpensive, impartial forum for the prompt adjustment of any claim he may have against any distributor.

A distributor who has not complied with an award of a Board of Arbitration is barred from submitting to that Board any claim against any exhibitor (Pet., p. 144).

XVIII

Interstate Commerce Admitted; National Arbitration Act Applies

Defendants admit that in carrying on business in motion picture films, in soliciting and making contracts for the future delivery over extended periods of time of motion picture films to be produced and delivered during such fu- [fol. 203] ture periods, in the transportation of films for the purpose of performing such contracts for the future delivery of films, and in the distribution of films from their exchanges to motion picture theatres in the performance by defendants of such contracts with the exhibitors, owners and operators of such theatres, defendants have been during the times mentioned in the petition, and are

now, engaged in interstate trade and commerce, throughout the United States, in motion picture films.

Defendants further aver that most, if not all, of the contracts for the future delivery of motion picture films, heretofore and now being solicited and entered into by them with exhibitors, owners and operators of motion picture theatres, directly relate to and affect interstate commerce in the United States; that such contracts evidence transactions involving interstate commerce within the meaning of that term as defined in the United States Arbitration Act approved February 12, 1925 (Public No. 401, 68th Congress), effective January 1, 1926, and that the written provision and agreement in each of such contracts to submit to arbitration claims and controversies arising out of such contract is valid, irrevocable and enforceable in the courts of United States under and by reason of the said United States Arbitration Act.

XIX

While defendants admit that contracts in the form of the Standard Exhibition Contract (Exhibit C, Pet., p. 82) relate to interstate commerce in films they aver that the arbitration clause contained in such contracts has no direct relation to such commerce. The agreement between distributor and exhibitor to arbitrate controversies has [fol. 204] to do only with the remedy to be used and the procedure to be followed in the event of a dispute arising in the performanc of the contract which the parties are unable to adjust. An agreement between defendants to arbitrate all disputes does not constitute a restraint of trade, either intrastate or interstate, within the meaning of the Sherman Anti Trust Act or any of the anti-trust laws of the states of the United States.

XX

In explanation and justification of the Standard Exhibition Contract and the Arbitration Clause therein contained, the Rules of Arbitration, including Rule IV relating to enforcement of decisions of the Boards of Arbitration, and the acts of defendants complained of in the Petition, defendants in this Answer have set forth for the considera-

tion of this Honorable Court the facts peculiar to the motion picture industry, the manner in which the Standard Exhibition Contract and the Arbitration Plan came into being, the condition of the industry before and after the Arbitration Plan was adopted, the reason for adopting the rules relating to the enforcement of decisions of the Boards of Arbitration, the purpose, nature and effect of such rules, the need of the distributors for reasonable protection in dealing with irresponsible exhibitors, the purpose of defendants and the end sought to be attained by them, and

Defendants deny that they have ever violated, or attempted or intended to violate, the Sherman Anti Trust Act of the United States and they deny that they have engaged or are now engaged in or intending or threatening to engage in any conspiracy in restraint of interstate trade and commerce in motion picture films; and they submit [fol. 205] in the absence of any present, or threatened, or intended violation, this Honorable Court is without jurisdiction to grant the relief prayed for in the petition, or any part thereof, or any other relief in the premises; and they pray to be hence dismissed, with their costs in this behalf.

Cadwalader, Wickersham & Taft, Solicitors for Defendants, 40 Wall Street, New York City. George W. Wickersham, Edwin P. Grosvenor, Gabriel L. Hess, Charles C. Pettijohn, of Counsel.

[fol. 206] EXHIBIT 1 TO ANSWER

February 6, 1926.

The undersigned have today approved a new standard Exhibition Contract. This contract shall be put into use immediately. Concurrent with this approval an arrangement has been effected for the appointment of an Advisory Committee to consult with the Motion Picture Producers and Distributors of America relative to still further improving the contract, if possible. This Advisory Committee consists of the following: Charles L. O'Reilly, R. F. Woodhull, W. A. Steffes, and E. V. Richards.

In addition there has been designated an Advisory Commission consisting of Hon. Henry W. Taft and Judge Moses H. Grossman, who shall be jointly consulted by the Advisory Committee and the Motion Picture Producers and Distributors of America in the event such Advisory Committee and the Motion Picture Producers and Distributors of America are unable to agree on any further changes which may be decided advisable.

The contract agreed upon today is mutual and contains many substantial improvements. It is our purpose sympathetically to interpret its provisions, to carry it out and to aid in efforts to improve it.

Jules H. Michael, H. M. Richey, Frank J. Rembusch, H. A. Cole, Julian Brylawski, Jos. M. Seider, R. R. Biechele, Charles L. O'Reilly, W. A. Steffes, R. F. Woodhull.

[fol. 207] EXHIBIT 2 TO ANSWER

February 6, 1926.

From Motion Picture Producers & Distributors of America, Inc., 469 Fifth Avenue, N. Y.

An agreement designed to end contractual disputes between motion picture theatre owners and the producers and distributors of motion pictures was reached yesterday (Saturday) at a luncheon given by Will H. Hays, President of the Motion Picture Producers and Distributors of America, for the officials of the important organizations of motion picture theatre owners throughout the United States.

The group—representing all the factors in the motion picture industry—agreed upon a Standard Exhibition Contract which will be used by all theatre owners and distributing companies in booking motion pictures for exhibition. The exhibitors of the United States were represented by R. F. Woodhull, Dover, N. J., President, Joseph M. Seider, New York City, Business Manager, and A. Julian Brylawski, Washington, D. C., Chairman of the Administrative Committee of the Motion Picture Theatre Owners of America; Charles L. O'Reilly, New York City, President of the

Theatre Owners Chamber of Commerce; W. A. Steffes, Minneapolis, Minn., President, Motion Picture Theatre Owners of Minnesota; H. M. Richey, Detroit, Mich., General Manager, Motion Picture Theatre Owners of Michigan; R. R. Beichele, Kansas City, Mo., President, Motion Picture Theatre Owners of Kansas and Missouri; Frank Rembusch, Indianapolis, Indiana, President, Motion Picture [fol. 208] Theatre Owners of Indiana; Jules Michaels, Buffalo, N. Y., President Motion Picture Theatre Owners of New York State, Buffalo-Albany Zone; H. A. Cole, Marshall, Texas, President Motion Picture Theatre Owners of Texas.

At the same time arrangements were made for the further consideration of the matter with an Advisory Committee; aided by an Advisory Commission if necessary.

The following signed statement was issued by those participating in the conference:

(Here follows Exhibit 1, supra.)

EXHIBIT 3 TO ANSWER

May 18, 1926.

A meeting was held at the office of the Motion Picture Producers and Distributors of America, Inc., attended by the representatives of all national and regional distributors of motion pictures and the Advisory Committee of exhibitors appointed at the Union League Club meeting held in February of this year, consisting of Charles L. O'Reilly, E. V. Richards, W. A. Steffes and R. F. Woodhull.

The subject matter of the meeting was a consideration of the administrative methods of the various distributors for putting into effect the Standard Exhibition Contract adopted in the industry by agreement between the distributors and the exhibitors. This Standard Contract being intended as a vehicle for the agreement between distributor and exhibitor for the exhibition of motion pictures contemplated the insertion of special terms peculiar to the distribution method of each company.

[fol. 209] No changes have been made in the standard clauses of the Exhibition Contract.

Certain forms of language having been suggested by the distributors for the purpose of carrying out their particular distribution methods, these clauses were discussed with the Advisory Committee. Wherever such proposed clauses were construable as inconsistent with provisions of the Standard Contract, they were either voluntarily or upon suggestion of the Advisory Committee withdrawn by the distributors. In other instances, where the special provisions were not in conflict with the Standard Exhibition Contract, but were designed to express the particular terms of the kinds of arrangements proposed by distributors, these provisions were discussed and on the suggestion of the Advisory Committee were adopted in such form that the attention of the exhibitor will be specifically drawn to the special terms of each contract.

Furthermore, there were accepted by the distributors at the Advisory Committee's suggestion the following constructive suggestions of the Advisory Committee, to-wit:

1. The establishment of a one-year statute of limitations preventing the assertion of stale claims before Boards of Arbitration and limiting such claims to those which have arisen within one year;

2. An arrangement whereby Boards of Arbitration are given equity power to the extent of restraining anticipated breaches of contract by distributors or other exhibitors.

Charles L. O'Reilly, E. V. Richards, W. A. Steffes, R. F. Woodhull, Will H. Hays.

[fol. 210] EXHIBIT 4 TO ANSWER

Substitute Resolution No. 6

Whereas, the motion picture industry recognizes that commercial arbitration promotes goodwill, economy and better standards of business and is endeavoring to develop in the most complete way possible a system of arbitration for the settlement of disputes between distributors and

exhibitors which will be both fair to all and speedily expedient; and

Whereas, it is the desire of all branches of the industry to use a uniform exhibition contract both to standardize its contractual relations and to provide for such arbitration; and

Whereas, it is the further desire of all branches of the industry that the Standard Exhibition Contract so providing for such system of arbitration shall be fair as possible at this time and shall be changed or modified as from time to time experience may demonstrate that it should be changed, and the further desire that the present provisions of such contract and all future changes or modifications therein shall themselves be subject to arbitration and the further desire that the rules and regulations for the arbitration of all disputes arising under such contract shall be as fair as posssible at this time and shall be changed or modified from time to time by arbitration as experience may demonstrate and warrant that they should be; and

Whereas, it is believed that changes can be effected in such Standard Exhibition Contract to improve the same:

[fol. 211] Now, therefore, be it resolved:

1. That to carry out the purposes of this resolution and the desire of all branches of the industry to promote fair arbitration and contractual relations, a committee of six shall be promptly designated, consisting of three members chosen by the unaffiliated Exhibitor delegates here assembled, three members chosen by the Producer-Distributor delegates here assembled; that three affiliated Exhibitor delegates without right to vote may participate in the work of this committee; that such committee shall immediately institute a study of the provisions of such Standard Exhibition Contract and the rules for the arbitration provided for therein and develop improvement in such contract and in such Rules for Arbitration and develop a plan for the further operation of arbitration. In the event the Exhibitor members and Producer-Distributor members of said committee are unable to agree, a seventh member of such committee shall be designated, such seventh member to be chosen unanimously by the six members and if such

six members cannot unanimously agree on such seventh member, then the Chief Justice of the Supreme Court of the United States shall be asked by such Committee to appoint its seventh member.

2. That after such adoption of such modified Standard Exhibition Contract, and such modified Rules of Arbitration, it shall be the further purpose of such committee to have periodical considerations of both said contract and Rules of Arbitration at consistent periods under the plan therefor which said committee shall develop to consider whether changes in such Standard Exhibition Contract [fol. 212] and Arbitration Rules are warranted by experience, and at such periodical deliberations the seventh member may be called in for decisions.

3. It is understood that such amended Standard Exhibition Contract and amended Rules of Arbitration shall be ready for use for the season of 1928-1929.

Be it further resolved that the use of a Standard Uniform Contract providing for arbitration both of disputes arising out of said contract and of the provisions of the contract itself, is a fair trade practice.

(Here follows Exhibit 5, to Answer, side folios 213 and 214)

[fol. 215] In United States District Court, Southern District of New York

In Equity. E. 45-100

United States of America, Petitioner,

against

Paramount Famous Lasky Corporation et al., Defendants

Opinion

Suit by the United States under Sec. 4 of the Sherman Anti-Trust Act of July 2nd, 1890, (26 Stat. 209) to enjoin the defendants from further engaging in a conspiracy in restraint of interstate trade and commerce, in violation of Sec. 1 of said Act.

[fols. 213 & 214]

EXHIBIT 5 TO ANSWER

Arbitration in the Motion Picture Industry

Summary of Report of Boards of Arbitration in the United States for 1927,

Years	Claims disposed of	Amount	Claims filed but settled before date of hearing	Amount	Awards made	Amount	Claims withdrawn	Amount	Cla... missed ... of ju... inco... file...
1927	14,356	3,825,636.76	4,671	1,254,273.04	6,442	1,720,421.96	2,368	671,920.32	
1926	12,566	2,712,495.22	5,018	807,081.77	5,476	1,356,233.78	812	314,089.18	
1925	11,887	2,542,544.40	4,269	802,747.69	5,450	1,351,206.72	554	124,797.23	
1924	11,197	2,119,622.56	5,697	871,035.74	4,875	1,077,968.99	332	132,115.48	
	50,006	$11,200,298.94	19,655	$3,735,138.24	22,243	$5,505,832.45	4,066	$1,242,922.21	1,...

EXHIBIT 5 TO ANSWER

Arbitration in the Motion Picture Industry

port of Boards of Arbitration in the United States for 1927, 1926, 1925, 1924

wards made	Amount	Claims withdrawn	Amount	Claims dismissed for want of jurisdiction, incompletely filed, etc.	Amount	Claims pending	Amount	Claims litigated after submission, ining entry of judgments in court actions upon awards	Claims litigated before submission to arbitration	Claims requiring seventh arbitrator
,442	1,720,421.96	2,368	671,920.32	426	150,331.35	1,095	414,115.30	62	5	36
,476	1,356,233.78	812	314,089.18	440	117,446.74	1,007	300,959.98	71	1	25
,450	1,351,206.72	554	124,797.23	292	87,147.86	539	205,216.71	17	1	22
,875	1,077,968.99	332	132,115.48	293	38,502.35	520	140,234.00	4	1	15
,243	$5,505,832.45	4,066	$1,242,922.21	1,451	$393,428.30	3,161	$1,060,515.99	154	8	98

The conspiracy charged in this case is predicated upon acts of the defendants in adopting and agreeing to use, and in using exclusively, certain uniform contracts for the lease of motion picture films to theatre owners throughout the United States, containing provisions for the determination by arbitration of all claims and controversies arising under said contracts, and in adopting and enforcing by [fol. 216] collective action rules governing the procedure and practice to be followed in the arbitration of such claims, and in the enforcement of arbitration awards. It is also alleged that compliance with the arbitration clauses and performance of the awards were enforced by certain supplemental understandings and agreements by some of the defendants, acting as agents but without the knowledge and against the general instructions of other defendants who were their principals.

Charles H. Tuttle, United States Attorney, attorney for Petitioners (C. Stanley Thompson and Ralstone R. Irvine, Special Assistants to the Attorney General, of Counsel).

Cadwalader, Wickersham & Taft, attorneys for Defendants (Edwin P. Grosvenor, Arthur L. Fisk, Jr. and Gabriel L. Hess, of Counsel).

THACHER, D. J.:

This suit, although tried separately, is a companion case to United States of America v. First National Pictures, Inc. et al., (E. 45-99), 34 F. (2d) 815, decided September 25th, 1929, and reference may be had to the Opinion in that case for a general description of the motion picture industry. The defendants named are ten corporations engaged in the distribution of motion picture films to theatre owners throughout the United States, the Motion Picture [fol. 217] Producers & Distributors of America, Inc., a New York membership corporation having a "Class B" membership composed of the defendant distributors, and thirty-two Film Boards of Trade maintained by the defendant distributors and other distributors of motion picture films in thirty-two principal cities of the United States. These Boards of Trade, whether incorporated or unincorporated, have a membership composed of the local

Exchange Managers of the defendant distributors and of all, or practically all, other distributors of motion picture films in the territory in which the particular Film Board of Trade conducts its operations.

The defendant distributors distribute, through their Exchanges, approximately sixty percent of the motion picture films distributed annually in the United States, and the membership of each defendant Film Board of Trade represents practically every distributor of motion picture films in the territory in which the Board operates. The members of the defendant Film Boards of Trade distribute approximately ninety-eight percent. of the motion picture films distributed annually in the United States, and it is impossible for any motion picture theatre to secure sufficient motion picture films for its regular operation without dealing with one or more members of the particular Film Board of Trade in the territory in which said theatre [fol. 218] is located. For many years it has been the custom for each distributor of motion picture films in the United States to announce, in the Spring of each year, its program of pictures which will be available for exhibition during the year commencing early in the following Fall. Immediately thereafter contracts are solicited from the owners of upwards of 25,000 motion picture theatres throughout the United States for the exhibition of these pictures. The business of solicitation is conducted by the Branch Managers and their salesmen, but the contracts are subject to approval and acceptance at the home office. As a rule the exhibitor contracts with the distributor for a group of pictures, varying in number from twenty to sixty, to be made available for exhibition at regular intervals throughout the year. The contract is usually negotiated and concluded before most of the pictures have been produced, and long before they have been made available for distribution, and it is therefore necessary to make provision in the contract for the selection and designation of play dates as the films become available in the Exchanges for distribution and exhibition. Since the agreement merely grants a license to exhibit, there are many other details which must be covered by the written agreement. The average theatre exhibits less than 200 feature pictures during the course of the year, and 350 short

subjects. No single distributor releases more than 75 fea- [fol. 219] ture pictures, while some release only 12 annually. It follows that the average exhibitor contracts in the course of the year with from five to fifteen distributors, who actively compete for this business. While the average exhibitor signs from 25 to 50 contracts, many exhibitors sign more than 50 contracts in the course of a year.

Prior to 1922 the contracts of the various distributors contained many widely differing provisions, and much confusion resulted, particularly in connection with the selection of play dates under varying contracts with different distributors. There was much dissatisfaction both among the distributors and among the exhibitors. Shortly after the organization of the Motion Picture Producers & Distributors of America, Inc., which included in its membership all of the defendant distributors, negotiations were instituted between the defendant distributors and various exhibitors in an effort to agree upon a uniform exhibition contract, and since that time there has been in progress in this industry between the motion picture distributors and exhibitors a continuous process of collective bargaining with reference to the provisions of the uniform contract. The distributors, being comparatively few in number, were compactly organized and thoroughly represented in these negotiations. The thousands of individual theatre owners [fol. 220] scattered throughout the United States were not thus completely organized, and many of them were not represented in these negotiations, although it must in fairness be said that insofar as the exhibitors were organized they were represented through representatives selected by their organizations.

In the Summer of 1922 the defendant distributors, the defendant association Motion Picture Producers & Distributors of America, Inc., and committees of representatives appointed by various exhibitor associations, appreciating the loss of time and money to the entire industry and the hardships of exhibitors resulting from the many dissimilarities in non-competitive matters existing in the long and complicated contracts of the different distributors in the United States, and desirous of saving such loss of time and money in order to reduce the cost of distribution and

exhibition of pictures in the United States, set about the preparation of a uniform or standard form of contract, the adoption of which would not in any manner diminish competition between distributors but which would help to eliminate some of the confusion in the industry arising out of these dissimilarities in matters of detail in intricate contracts. With this purpose the defendant distributors, by committees and counsel, for many months conferred and negotiated with each other and with the committees and [fol. 221] counsel of various exhibitors' associations, national and state, and with individual exhibitors, in an effort to reach some form of contract which would be acceptable to distributors and exhibitors alike. The form of contract which is annexed to the petition as "Exhibit A" was finally arrived at as the form acceptable to more persons interested than any other form, and it was adopted and used by the defendant distributors and some other distributors, beginning with the Spring of 1923.

In 1925 and early in 1926 similar conferences were had between the distributors and representatives of exhibitor organizations and individual exhibitors, which resulted in the adoption, on February 6, 1926, of the first Standard Exhibition Contract, which is annexed to the petition and marked "Exhibit B," and in an agreement upon rules and regulations relating to arbitration, referred to in clause Twentieth of said contract—these Rules and Regulations being annexed to the petition and marked "Exhibit E." At the same time an Exhibitors Advisory Committee was chosen to consult with the distributors relative to still further improvements in the contract. The members of this Advisory Committee were the President of the Motion Picture Theatre Owners of America, the President of the Theatre Owners Chamber of Commerce, the President of [fol. 222] the Motion Picture Theatre Owners of the Northwest, and E. V. Richards, an exhibitor operating a large number of theatres in the South and not a member of any exhibitors' organization. This Committee continued negotiations with the distributors, and reached an agreement in May 1926 with reference to certain changes in the Standard Exhibition Contract.

In September 1927 the Federal Trade Commission invited those engaged in producing, distributing and exhibit-

ing motion pictures in the United States to attend a Trade Practice Conference in New York City for the purpose of participating in deliberations relating to the elimination from the industry of any unfair methods of competition which may have been practiced. At this conference a resolution was passed, with only one dissenting vote, expressing the desire of all branches of the industry that a uniform exhibition contract be used, declaring the arbitration of disputes arising out of the contract to be a fair trade practice, and directing the immediate designation of a committee of nine to institute a study of the provisions of the Standard Exhibition Contract and the Rules for Arbitration provided for therein, and to develop improvements in such contract and in such Rules for Arbitration—the contract and rules to be ready for use for the season of [fol. 223] 1928-29. After consideration by the Federal Trade Commission this resolution was approved by the Commission on May 25, 1928. Pursuant to this resolution the Contract Committee was appointed before the close of the conference—three members chosen by the unaffiliated exhibitor delegates (that is to say, delegates representing exhibitors not in any way affiliated with the distributors), three by the distributor delegates, and three by the affiliated exhibitor delegates; the latter three members of the Committee being without right to vote by direction of the resolution. This Committee, after protracted conferences and consideration of the contract and rules for arbitration, agreed upon the Standard Exhibition Contract which is annexed to the petition as "Exhibit C" and upon the Rules of Arbitration dated May 1, 1928, which are annexed to the petition as "Exhibit G."

That the defendant distributors, together with other distributors, organized the Film Boards of Trade, and caused these Boards to adopt by-laws relating to arbitration (a copy of which is annexed to the petition marked "Exhibit D"), the Rules and Regulations relating to Arbitration bearing date March 1, 1926, specified in the Standard Exhibition Contract (a copy of which is annexed to the petition marked "Exhibit E") and the Rules and Regulations relating to Arbitration specified in the Standard Exhibi-[fol. 224] tion Contract, and dated December 1, 1926 (a

copy of which is attached to the petition marked "Exhibit F") and the Rules of Arbitration specified in the Standard Exhibition Contract filed with the American Arbitration Association, dated May 1, 1928 (a copy of which is attached to the petition marked "Exhibit G"), and that the Film Boards of Trade operated in accordance with these various contracts and rules, is admitted.

In the Standard Exhibition Contract of May 1, 1928, the provisions with respect to arbitration were in substance as follows: The parties agree that before either of them shall resort to any court to determine, enforce or protect the legal rights of either, each shall submit to the Board of Arbitration established and constituted pursuant to the Rules of Arbitration, in the city wherein is situated the Exchange of the distributor from which the exhibitor is served, or if there be no such Board of Arbitration in such city then to the Board of Arbitration in the city nearest thereto, all claims and controversies arising under the contract for determination pursuant to the Rules of Arbitration and the rules of procedure and practice adopted by the Board of Arbitration. The parties further agree to abide by and forthwith comply with any decision and award in any such arbitration proceeding, and agree and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the [fol. 225] laws of such jurisdiction now or hereafter in force. Each party waives the right of trial by jury upon any issue arising under the contract and agrees to accept as conclusive the findings of fact made by the Board of Arbitration, and consents to the introduction of such findings in evidence in any judicial proceeding. If the exhibitor fails or refuses to consent to submit to arbitration any claim or controversy arising under the contract, or under any other Standard Exhibition Contract which he may have with the distributor, or with any other distributor, or abide by and forthwith comply with any decision or award of the Board of Arbitration upon any such claim or controversy so submitted, the distributor may, at its option, demand for its protection and as security for the performance by the exhibitor of the contract and of all other existing contracts between the parties, payment by the exhibitor

of an additional sum not exceeding $500 under each existing contract. Such sum to be retained by the distributor until the complete performance of all such contracts and then applied, at the option of the distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the distributor; the balance, if any, to be returned to the exhibitor. In the event of the exhibitor's failure to pay such additional sum within seven days after demand, the distributor may by written notice to the exhibitor suspend service under the [fol. 226] contract until said sum shall be paid and or termination of the contract.

It will be noted that the effect of these provisions is that if an exhibitor fails or refuses to submit to arbitration any claim or controversy arising under any contract with any distributor, then the right of every distributor to demand security upon every contract immediately arises, and if the demand is not complied with within seven days all pending contracts with every distributor may be cancelled. In view of the exhibitor's necessity to contract in advance with several distributors for the delivery of films to be exhibited in accordance with a program laid out for more than a year in advance, it will at once be seen that the exhibitor's refusal to arbitrate will immediately subject him to heavy demands for security, which if not complied with will result in the termination of his entire supply of films for exhibition in his theatre, and probably result in conditions under which he cannot continue in business. It is alleged in the petition that the members of the Film Boards of Trade have gone beyond the requirements of the contracts and the arbitration rules and have entered into supplemental understandings and agreements, without the knowledge and against the general instructions of the defendant distributors and of the defendant Association, to refuse to contract for the future exhibition of any motion picture [fol. 227] films with any exhibitor who has failed to comply with any decision of any Board of Arbitration. The proofs abundantly establish the fact that this was the consistent practice of many of the Film Boards of Trade until quite recently, when their attention was called to the fact that such action was not justified by the rules. When this was done the members of the Film Boards of Trade were told

that the question whether distributors would deal with any exhibitor who had refused to arbitrate or had failed to comply with an award was one for the decision of individual distributors; but at the same time it was stated that it has been the consistent policy of the distributors to refuse to deal with exhibitors who failed to arbitrate or to comply with arbitration awards. The coercive effect of this situation has undoubtedly been that unless exhibitors submitted to arbitration and complied with the awards rendered against them, they have been unable to enter into new contracts and have been required to suspend service in their theatres unless able and willing to comply with the arbitration awards rendered against them or to deposit security under all of their outstanding contracts.

The Rules of Arbitration referred to in this contract provided that the Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of [fol. 228] Trade, called Distributor's representatives, and three of whom shall be proprietors or managers of theatres in the territory where the Film Board of Trade is located, called Exhibitor's representatives; provided, however, that in no event shall such exhibitor's representatives be managers of theatres owned or controlled by producers or distributors. The distributor's representatives are appointed by the members of the Film Boards of Trade; the exhibitor's representatives by the local Exhibitors' Association, and if there be no local Exhibitors' Association or if such Association fails to appoint, then the President of the local Chamber of Commerce, upon request of the President of the Film Board of Trade, or if the President of the Chamber of Commerce fails to appoint then the Mayor or other chief executive of such city, appoints the Exhibitor's representatives. Failing all this, the exhibitor's representatives are appointed by the President of the American Arbitration Association from among exhibitors operating theatres in the territory wherein the Board of Arbitration is located. In case of a tie a majority of the members of the Board of Arbitration appoint a seventh arbitrator, or if unable to agree, the Secretary of the Board requests the President of the Chamber of Commerce, or if there be none then the Mayor or other chief executive of the city, to appoint a seventh

arbitrator, who shall be neither a distributor nor an exhib-
[fol. 229] itor, nor interested in the motion picture business. The Board of Arbitration has power to determine the dispute or controversy, to make findings, to direct what shall be done by either or both parties with respect to the matter in dispute, and to fix the maximum amount, not exceeding $500, which each distributor may demand as security pursuant to the arbitration clause. The findings, determination and direction of the Board are made conclusive and binding upon the parties. There are various rules of practice and procedure, and in addition rules for the enforcement of decisions of the Board, which are in substance as follows: The Secretary of the Board of Arbitration is required from time to time to notify in writing the Secretary of the Film Board of Trade located in each city out of which the exhibitor is served, of the name and address of each exhibitor who has been found by such Board of Arbitration to have refused to submit to arbitration a controversy arising under a contract containing the arbitration clause, or to have refused to comply with the decision of such Board of Arbitration; and in this connection the maximum amount (not exceeding $500) which each distributor may demand as security under each existing contract. Upon receipt of such information the Secretary of the Film Board of Trade is required thereupon to pass the same information along
[fol. 230] to all members of his Film Board of Trade, and upon receipt thereof each member having a contract or representing a distributor having a contract containing the arbitration clause with any such exhibitor is required to demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. It is provided that said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract, plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration. If the exhibitor fails to comply with any such demand the distributor is required, under the rules, upon the expiration of seven days, to suspend service under each of its contracts with the exhibitor until such exhibitor shall have furnished the security demanded or shall have com-

plied with the decision of the Arbitration Board. If service shall have been thus suspended for a period of ten days, such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended service shall thereafter resume service unless and until the exhibitor shall have furnished the security demanded or shall have complied with the decision of the Arbitration Board.

[fol. 231] Assuming the contracts and the system of compulsory arbitration to have been just and reasonable in operation, the fact that many exhibitors were not represented in the conferences leading to their adoption cannot be disputed. One can hardly imagine a more direct restraint upon trade than an agreement between competitors in an open market not to trade except upon terms which they have fixed in advance. But it is argued that the terms of the Standard Exhibition Contract were not unfair or unreasonable; that the system of compulsory arbitration has been of great advantage to exhibitors and distributors alike, and therefore that the agreement of the distributors to use only this form of contract in all their dealings, and to enforce its arbitration clauses by collectively refusing to deal with any exhibitor who fails to comply with them, is not an undue restraint of interstate commerce within the meaning of the Statute as interpreted in the Standard Oil Case (221 U. S. 1) and the American Tobacco Case (221 U. S. 106). In judging the inherent character of the restraint one must look not only to the restraint voluntarily imposed upon the competitive activities of those who are in the combination, but also to the involuntary restraint imposed upon the freedom of outsiders to engage in trade under natural and normal conditions. It is therefore not enough to say that competition between distributors is keen and active, or even [fol. 232] that it has been promoted and enhanced by what has been done, if, in fact, it can be seen that the freedom of others to engage in trade, to enter into normal commercial agreements, and to have recourse to the courts for their rights, has been unduly restrained by the coercive and collective action of the defendants. That competition between the distributors has been promoted by the adoption of the Standard Exhibition Contract, and that in many ways general trade conditions have been vastly improved, I have

no doubt, and so find. But the record is equally clear that all this good has been accomplished through the exercise and irresistible economic force consolidated by combination in the hands of the distributors, who collectively control the available supply of films and by virtue of this control have imposed their will upon the industry. By agreement of these distributors exhibitors who were not represented in the adoption of the uniform contracts have been constrained to accept their terms regardless of their wishes, and by the compulsory system of arbitration, sanctioned and enforced by collective action of the distributors, have been constrained to perform the contractual obligations thus assumed. In fairness it cannot be said that the restraint imposed upon these exhibitors is voluntary because they accept and agree to be bound by the contracts. They can [fol. 233] have none other, because the defendants have agreed that they shan't; and unless something more than the mere acceptance of all they can get is shown they must be said to have acted under an involuntary restraint, imposed and continued by the defendants to the end that the contracts shall be signed and their terms obeyed. That such coercive restraint upon the commercial freedom of an exhibitor who was neither represented nor consulted with reference to the agreement to adopt the standard form of contract is undue and unreasonable both at Common Law and under the Sherman Act, I cannot doubt. Gains resulting from such restraints to the industry as a whole do not in the eyes of the Statute justify the vicarious sacrifice of the individual, even for the sake of bigger and better business. A State Legislature could not lawfully impose compulsory arbitration upon the motion picture industry. (Wolff v. Industrial Court, 262 U. S. 522.) Much less should it be within the power of a combination of practically all the distributors to do so by coercion exercised through control of the available supply of films.

The decision in United States v. First National Pictures, Inc., supra, is distinguishable because in that case the collective power of the defendants was exercised to correct fraudulent and irregular trade practices by demanding reasonable security for the performance of new contracts. [fol. 234] Under the circumstances there disclosed there was nothing oppressive in what was done pursuant to the

Credit Rules. This case presents an entirely different situation. The distinction lies in the inherent nature of the restraints imposed, and in the instant case the restraint if not shown to have been voluntary on both sides is oppressive, and therefore undue and unreasonable.

Nothing that has been said should be taken in derogation of the right of trade or commercial groups, or of traders generally, to voluntarily impose upon themselves standard forms of agreement which do not unduly restrict competition and thus restrain trade, or to agree that all controversies arising between them shall be settled by arbitration. Such agreements dealing only with the rights of those who execute and intend to be bound by them are normal and usual, and are proper instruments in the lawful conduct of trade. It is only when such argreements are sought to be imposed upon others, regardless of their wishes, by coercive combinations having the power to say "Take what is offered or get nothing", that they become illegal.

Upon settlement of the decree the parties may suggest provisions, if such be feasible, under which uniform contracts containing arbitration clauses may be voluntarily [fol. 235] adopted by the members of this industry without coercion or other unlawful restraint.

(Sgd.) T. D. Thacher, U. S. D. J.

October 15th, 1929.

[fol. 236] In United States District Court, Southern District of New York

E. 45-100

United States of America, Petitioner,

against

Paramount Famous Laskey Corporation et al.,
Defendants

Decree

This cause having come on to be heard, and the Court having considered the evidence and the arguments of coun-

sel, and having filed its Opinion herein on the 15th day of October, 1929, and upon motion of the petitioner by Charles H. Tuttle, United States Attorney for the Southern District of New York, and John Lord O'Brian, the Assistant to the Attorney General, and C. Stanley Thompson, Special Assistant to the Attorney General, of Counsel, for relief in accordance with the prayer of the petition, and the defendants having appeared by their attorneys, Cadwalader, Wickersham & Taft, and Edwin P. Grosvenor, Arthur L. Fisk, Jr., and Gabriel L. Hess, of Counsel; now, therefore, it is

Ordered, adjudged and decreed as follows:

I

That the agreement of the defendants to adopt and to use exclusively in contracting with exhibitors of motion pic- [fol. 237] tures throughout the United States the "Standard Exhibition Contract" dated May 1, 1928, which is attached to the petition herein as Exhibit "C" thereto, the adoption by the defendants of the "Rules of Arbitration" dated May 1, 1928, which is attached to the petition herein as Exhibit "G" thereto, and all the activities and agreements of said defendants by means of which they have collectively coerced adoption of and compliance with said "Standard Exhibition Contract" and said "Rules of Arbitration," constitute a conspiracy in restrain- of interstate trade and commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

II

That the defendants, their officers, agents, servants and employees, and all persons acting under, through or on behalf of them, or any of them, hereby are perpetually enjoined, restrained and prohibited, individually and collectively:

1. From further engaging in or carrying out said conspiracy or any other conspiracy similar to or having the same purpose and/or effect as said conspiracy.

2. From doing any act or thing whatsoever for the purpose or with the effect of carrying out hereafter the purposes of said conspiracy, or any of them.

3. From entering into any agreement embodying the provisions of paragraph "Eighteenth" of said "Standard [fol. 238] Exhibition Contract" dated May 1, 1928, and or the provisions of said "Rules of Arbitration" dated May 1, 1928.

4. From enforcing, directly or indirectly, any of the provisions of paragraph "Eighteenth," entitled "Arbitration," of said Standard Exhibition Contract" dated May 1, 1928, against any exhibitor of motion pictures in the United States having an existing contract licensing the exhibition of a motion picture or of motion pictures which contains said paragraph.

5. From enforcing, directly or indirectly, any of the provisions of Rule IV, entitled "Enforcement of Decisions of Board of Arbitration," of said "Rules of Arbitration" dated May 1, 1928, against any exhibitor of motion pictures in the United States, on account of any claim, controversy or dispute arising under or on account of any existing contract licensing the exhibition of a motion picture or of motion pictures.

6. From demanding security from any exhibitor of motion pictures in the United States because of any failure or refusal to comply with any provisions of said paragraph "Eighteenth," entitled "Arbitration," of said "Standard Exhibition Contract" of May 1, 1928, contained in any existing contract licensing the exhibition of a motion picture or of motion pictures.

7. From retaining any sum or sums heretofore received in accordance with the provisions of said paragraph "Eighteenth" of said "Standard Exhibition Contract" dated May 1, 1928, and/or said Rule IV entitled "Enforcement of Decisions of Board of Arbitration" of said "Rules of Arbitration" dated May 1, 1928, from any exhibitor of motion [fol. 239] pictures in the United States, as security for the performance of any contract licensing the exhibition of a motion picture or of motion pictures.

8. From suspending and from refusing to promptly resume service to any exhibitor in the United States because of any failure or refusal to comply with any provision of said paragraph "Eighteenth" of said "Standard Exhibition Contract" of May 1, 1928, or of said "Rules of Arbitration" dated May 1, 1928, unless there be legal cause for suspending or refusing to promptly resume such service arising independently of any of the provisions of said paragraph "Eighteenth" of said "Standard Exhibition Contract" or of said Rule IV of said "Rules of Arbitration."

9. From continuing to act upon and from entering into any understanding, arrangement, combination, conspiracy or agreement either to refrain from entering into any contract for licensing the exhibition of a motion picture or motion pictures, or to require the deposit of security as a condition for entering into or continuing to perform any such contract which has not been breached by the exhibitor, or to fix in advance any terms or conditions upon which any defendant or any member of any defendant Film Board of Trade shall enter into any such contract,—if the purpose or effect of such understanding, arrangement, combination, conspiracy or agreement is either:

(a) To coerce or to require any exhibitor of motion pictures in the United States to submit to arbitration any claim, controversy or dispute with any defendant or with any member of any defendant Film Board of Trade, aris- [fol. 240] ing under any contract licensing the exhibition of a motion picture or of motion pictures; or

(b) To coerce or to require any exhibitor of motion pictures in the United States to surrender and to waive the right to have any claim, controversy or dispute with any defendant or with any member of any defendant Film Board of Trade, arising under any contract licensing the exhibition of a motion picture or of motion pictures, settled and determined by any Court having jurisdiction of such claim, controversy or dispute; or

(c) To coerce or to require any exhibitor of motion pictures in the United States to comply with any award rendered against him in any arbitration proceeding with any defendant or with any member of any defendant Film Board

of Trade, arising under or on account of any contract licensing the exhibition of a motion picture or of motion pictures, without recourse or appeal to any Court having jurisdiction of the claim, controversy or dispute occasioning said award.

III

Nothing contained in this decree shall be construed as prohibiting any defendant or any member of any defendant Film Board of Trade from performing and/or continuing to perform, or enforcing and/or continuing to enforce, by any lawful means any contractual obligation the performance or enforcement of which is consistent with the provisions of this decree. Nor shall anything contained in this decree [fol. 241] be construed as prohibiting any defendant or any member of any defendant Film Board of Trade from selecting his or its own trade, from disposing of his or its own products, or from making any contracts with or without provisions relating to arbitration—all upon such terms as he or it may choose—provided such acts are done individually and without combining, conspiring or agreeing with any other defendant or any member of any Film Board of Trade.

Nothing contained in this decree shall be construed in derogation of the right of the defendants, or any of them, individually or jointly, to negotiate and to agree with any exhibitors of motion pictures on a standard form of contract to be used in licensing the exhibition of motion pictures or on any standard provision or provisions to be included in such license contracts, including reasonable provisions for the arbitration of disputes arising thereunder, if done voluntarily and without coercion, and if applied only to the parties to the negotiations and agreement.

Nothing contained in this decree shall be construed as limiting or modifying, or shall in any wise limit, restrict, modify or qualify, the Opinion filed in the companion case hereto, "United States v. First National Pictures, Inc., et al," (In Equity No. 45-99), and the decree of the Court entered therein dismissing the petition of the Government on the merits as against the defendants herein; in which case it was held that the Rules and Regulations for the establishment and operations of a Credit Committee, annexed to said

petition as "Exhibit A," as agreed to, adopted and enforced by these defendants, was not and is not in violation of the [fol. 242] Sherman Anti-Trust Act, and that these defendants have not engaged in a combination or conspiracy to restrain trade or commerce in violation of said Act on account of their adoption and enforcement of and operation under said Credit Rules and Regulations.

IV

Jurisdiction of this cause is hereby retained for the purpose of enforcing this decree and making such other and further orders and decrees as may become necessary, and for the purpose of enabling any party hereto to apply to the Court for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree, or to apply to the Court for modification hereof if it be hereafter shown to the satisfaction of the Court that by reason of changed conditions or changes in the statute law of the United States the provisions hereof have become inadequate or inappropriate, or have become unduly oppressive to the defendants, and are no longer necessary to secure conditions in harmony with the law.

Dated New York, January 21st, 1930.

(Sgd.) T. D. Thacher, United States District Judge.

[fol. 243] In United States District Court

[Title omitted]

Petition for Appeal and Order Allowing Same

To the Honorable Judges of the United States District Court for the Southern District of New York:

And now comes Paramount Famous Lasky Corporation and all of the other defendants named in the caption hereof (which caption is hereby made a part of this petition) by Cadwalader, Wickersham & Taft their solicitors, and conceiving themselves aggrieved by the final Decree of this Court made in the above-entitled cause the 21st day of

[fol. 244] January, 1930, and entered in the office of the Clerk of this Court the 22nd day of January, 1930, pray that an appeal therefrom may be allowed them to the Supreme Court of the United States for the reasons specified in their assignment of errors presented herewith; and the defendants aforesaid pray that a transcript of the record of the proceedings herein upon which the said Decree was made together with the said Decree and the opinion of the Court may be duly authenticated and sent to the said Supreme Court of the United States.

And the defendants aforesaid pray that this Court determine the amount of a cash deposit which it may deem sufficient to act as a supersedeas herein.

And the defendants show that they are entitled to this appeal under Title 15, Section 29 of the United States Code of Laws.

Dated New York, N. Y., March 20, 1930.

Henry W. Taft, Counsel for Defendants. Cadwalader, Wickersham & Taft, Solicitors for Defendants, 76 William Street, New York, N. Y.

The appeal herein prayed in the above-entitled cause is hereby allowed and the payment into Court of the sum of $250.00 in lieu of a bond is approved, save to act as a supersedeas.

T. D. Thacher, United States District Judge.

Dated March 21, 1930.

[fol. 245] In United States District Court

[Title omitted]

Assignment of Errors

Now come the defendants, Paramount Famous Lasky Corporation, et al., and in connection with their petition for appeal say that in the record of proceedings herein and in the final decree herein made the 21st day of January, 1930, manifest error hath intervened to the prejudice of the defendants, to-wit:

1. The Court erred in holding that the agreement of the defendants to adopt and to use exclusively in contracting

with exhibitors of motion pictures throughout the United States the "Standard Exhibition Contract" dated May 1, 1928, and the adoption by the defendants of the "Rules of Arbitration" dated May 1, 1928, and all the activities and agreements of said defendans by means of which they have collectively effected the adoption of and compliance with said "Standard Exhibition Contract" dated May 1, 1928, and said "Rules of Arbitration" dated May 1, 1928, amount to coercion and constitute a conspiracy in restraint of interstate trade and commerce in violation of the Act of Congress known as the Sherman Anti-Trust Act, as well as a conspiracy at common law.

2. The Court erred in refusing to hold that the agreement of the defendants to adopt and to use exclusively in con- [fol. 246] tracting with exhibitors of motion pictures throughout the United States the "Standard Exhibition Contract" dated May 1, 1928, and the adoption by the defendants of the "Rules of Arbitration" dated May 1, 1928, and all the activities and agreements of said defendants by means of which they have collectively brought about the adoption of and compliance with said "Standard Exhibition Contract" dated May 1, 1928, and said "Rules of Arbitration" dated May 1, 1928, constitute normal and reasonable regulations of a business and, notwithstanding the interstate character of the business, do not violate the Act of Congress known as the Sherman Anti-Trust Act.

3. The Court erred in holding that the defendants had agreed to refuse to make departures from the "Standard Exhibition Contract" dated May 1, 1928, even if requested to do so by an exhibitor.

4. The Court erred in refusing to hold (a) that the fact that the "Standard Exhibition Contract" dated May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, were adopted pursuant to a resolution adopted at a Trade Practice Conference held under the auspices of the Federal Trade Commission in October, 1927, the resolution being approved by the Federal Trade Commission on May 25, 1928, established prima facie the reasonable and lawful character of the said "Standard Exhibition Contract" dated May 1, 1928, and "Rules of Arbitration" dated May

1, 1928, and (b) that this prima facie showing was not overcome or rebutted by the evidence introduced on behalf of the United States.

5. The Court erred in refusing to hold (a) that the fact that the "Standard Exhibition Contract" dated May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, [fol. 247] were adopted pursuant to the demand and insistence of the representatives of exhibitors and exhibitor organizations throughout the United States established prima facie the reasonable and lawful character of the said "Standard Exhibition Contract" dated May 1, 1928, and "Rules of Arbitration" dated May 1, 1928, and (b) that this prima facie showing was not overcome or rebutted by the evidence introduced on behalf of the United States.

6. The Court erred in refusing to hold (a) that the circumstances that the "Standard Exhibition Contract" dated May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, had their origins respectively in the "Uniform Exhibition Contract" of 1923 (and the modified form thereof known as the "Standard Exhibition Contract" dated March 1, 1926) and in the "By-Laws of Film Boards of Trade Relating to Arbitration" (and the modified forms thereof known as the "Rules and Regulations Relating to Arbitration" dated March 1, 1926, and the "Rules and Regulations Relating to Arbitration" dated December 1, 1926), coupled with the circumstance that said Contracts, By-Laws and Regulations of 1923 and 1926 were themselves adopted pursuant to the demand and insistence of the representatives of exhibitors and exhibitor organizations throughout the United States, established prima facie the reasonable and lawful character of the said "Standard Exhibition Contract" dated May 1, 1928, and "Rules of Arbitration" dated May 1, 1928, and (b) that this prima facie showing was not overcome or rebutted by the evidence introduced on behalf of the United States.

7. The Court erred in refusing to hold (a) that the circumstance that the "Standard Exhibition Contract" dated [fol. 248] May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, were put into effective operation by means of the active cooperation of the representatives of

the exhibitors and exhibitor organizations throughout the United States and at the insistence of said exhibitors and exhibitor organizations throughout the United States, established prima facie the reasonable and lawful character of the said "Standard Exhibition Contract" and "Rules of Arbitration", and (b) that this prima facie showing was not rebutted by the evidence introduced on behalf of the United States.

8. The Court erred in failing to hold that said "Standard Exhibition Contract" dated May 1, 1928, and said "Rules of Arbitration" dated May 1, 1928, are normal and usual contracts and agreements and methods of furthering trade, and not unlawful.

9. The Court erred in refusing to hold that the methods whereby the "Standard Exhibition Contract" dated May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, were put into effective operation, were normal and usual methods of furthering trade and were not unlawful.

10. The Court erred in characterizing as an unlawful conspiracy and in enjoining defendants from continuing to carry on, the activities and means whereby the effective operation of the "Standard Exhibition Contract" dated May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, is maintained; and in enjoining defendants from doing any other acts or using any other means to the same end.

11. The Court erred in enjoining the defendants from entering into any agreement embodying the provisions of [fol. 249] Paragraph "Eighteenth" of said "Standard Exhibition Contract" dated May 1, 1928, and/or the provisions of said "Rules of Arbitration" dated May 1, 1928.

12. The Court erred in enjoining the defendants from enforcing, directly or indirectly, any of the provisions of Paragraph "Eighteenth," entitled "Arbitration," of said "Standard Exhibition Contract" dated May 1, 1928, against any exhibitor of motion pictures in the United States having an existing contract licensing the exhibition of a motion picture or of motion pictures which contains said paragraph.

13. The Court erred in enjoining the defendants from enforcing, directly or indirectly, any of the provisions of Rule

IV, entitled "Enforcement of Decisions of Board of Arbitration," of said "Rules of Arbitration" dated May 1, 1928, against any exhibitor of motion pictures in the United States, on account of any claim, controversy or dispute arising under or on account of any existing contract licensing the exhibition of a motion picture or of motion pictures.

14. The Court erred in enjoining the defendants from demanding security for the performance of existing contracts from any exhibitor of motion pictures in the United States because of any failure or refusal to comply with any provisions of said Paragraph "Eighteenth," entitled "Arbitration," of said "Standard Exhibition Contract" of May 1, 1928, contained in any existing contract licensing the exhibition of a motion picture or of motion pictures.

15. The Court erred in refusing to hold that an agreement among distributors of motion picture films to decline to complete existing contracts with exhibitors who have either refused to submit to arbitration a controversy arising under a [fol. 250] contract containing an arbitration clause or refused to comply with the decision of a board of arbitration, until security is deposited, is a normal and usual method of furthering trade, and not unlawful.

16. The Court erred in enjoining the defendants from retaining any sum or sums heretofore received in accordance with the provisions of said Paragraph "Eighteenth" of said "Standard Exhibition Contract" dated May 1, 1928, and or said Rule IV entitled "Enforcement of Decisions of Board of Arbitration" of said "Rules of Arbitration" dated May 1, 1928, from any exhibitor of motion pictures in the United States, as security for the performance of any contract licensing the exhibition of a motion picture or of motion pictures.

17. The Court erred in enjoining the defendants from suspending and from refusing to promptly resume service to any exhibitor in the United States because of any failure or refusal to comply with any provision of said Paragraph "Eighteenth" of said "Standard Exhibition Contract" of May 1, 1928, or of said "Rules of Arbitration" dated May 1, 1928, unless there be legal cause for suspending or refusing to promptly resume such service arising independently of

any of the provisions of said Paragraph "Eighteenth" of said "Standard Exhibition Contract" or of said Rule IV of said "Rules of Arbitration."

18. The Court erred in refusing to hold that Paragraph "Eighteenth" entitled "Arbitration" of the "Standard Exhibition Contract" dated May 1, 1928, is a normal and usual method of regulating and furthering trade.

19. The Court erred in refusing to hold that Rule IV en- [fol. 251] titled "Enforcement of Decisions of Board of Arbitration" of the "Rules of Arbitration" dated May 1, 1928, is a normal and usual method of regulating and furthering trade.

20. The Court erred in enjoining defendants from combining or agreeing so to condition their contracts for licensing the exhibition of motion pictures as to require any exhibitor in the United States to submit to arbitration any claim, controversy or dispute with any defendant or with any member of any defendant Film Board of Trade, arising under any contract licensing the exhibition of a motion picture or of motion pictures.

21. The Court erred in enjoining defendants from combining or agreeing so to condition their contracts for licensing the exhibition of motion pictures as to require any exhibitor in the United States to waive the right to have settled by a Court of competent jurisdiction any claim, controversy or dispute with any defendant or with any member of any defendant Film Board of Trade, arising under any contract licensing the exhibition of motion pictures.

22. The Court erred in enjoining defendants from combining or agreeing so to condition their contracts for licensing the exhibition of motion pictures as to require any exhibitor in the United States to comply with any award rendered against him in any arbitration proceeding with any defendant or with any member of any defendant Film Board of Trade, arising under or on account of any contract licensing the exhibition of a motion picture or of motion pictures, without recourse or appeal to any Court having jurisdiction of the claim, controversy or dispute occasioning said award.

23. The Court erred in refusing to hold that the circum-[fols. 252 & 253] stance (admitted of record by stipulation) that each contract between distributor and exhibitor was a matter of negotiation and bargaining between the distributor and the exhibitor, negatived coercion and precluded the imputation of an unlawful character to the activities of the defendants.

24. The Court erred in holding that, even though competition is in fact promoted rather than lessened by the adoption of the "Standard Exhibition Contract" dated May 1, 1928, and the "Rules of Arbitration" dated May 1, 1928, the tendency of the activities of the defendants to restrain the freedom of outsiders to engage in the trade renders such activities unlawful.

For which errors, the defendants pray that the said decree of the United States District Court for the Southern District of New York dated January 21, 1930, in the above-entitled cause, be reversed and a decree rendered in favor of the said defendants.

Dated March 20, 1930.

Henry W. Taft, Counsel for Defendants. Cadwalader, Wickersham & Taft, Solicitors for Defendants, 76 William Street, New York, N. Y.

[fols. 254-264] Citation, in usual form, showing service on Charles H. Tuttle, omitted in printing.

[fol. 265] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE STATEMENT OF EVIDENCE

It is hereby stipulated and agreed between the parties that the Statement of Evidence in Narrative Form which is attached hereto be approved as being a true, complete and properly prepared statement of evidence received on the

trial of said cause, and that the same be substituted for the statement heretofore lodged with the Clerk of this Court.

Charles H. Tuttle, United States Attorney. Cadwalader, Wickersham & Taft, Solicitors for Defendants.

Dated April 15, 1930.

[fol. 266] In United States District Court

In Equity. 45-100

United States of America, Plaintiff,

vs.

Paramount Famous Lasky Corporation et al., Defendants

Statement of Evidence

Before Honorable Thomas D. Thacher, District Judge

New York, March 14th, 1929—10:30 A. M.

Appearances of Counsel

Charles H. Tuttle, United States Attorney, Solicitor for Plaintiff; C. Stanley Thompson and Ralstone R. Irvine, Special Assistants to the Attorney General, Counsel.

Cadwalader, Wickersham & Taft, Solicitors for Defendants; Edwin P. Grosvenor, Arthur L. Fisk, Jr., and Gabriel L. Hess, Counsel.

[fol. 267] Prima Facie Proofs

Colloquy Between Court and Counsel

Mr. Thompson: Your Honor, there was one reference made to a statement in the petition on page 48, the statement that the supplemental agreements and understandings entered into without the knowledge and against the general instructions of the defendant distributors and defendant association. If that is to be construed as applying to an im-

plied agreement or understanding to the effect that any contracts shall not be entered into with exhibitors against whom there are outstanding awards, I think the government must move to strike out that allegation.

Mr. Grosvenor: Is your motion conditional. I thought you said "if."

Mr. Thompson: I thought it would be wise to strike it out. It might raise a controversy later as to whether some of the evidence would be in conflict with the allegation. That is on page 48, starting with line 2.

The Court: Is there any objection to striking out the sentence?

Mr. Grosvenor: This is a new point. There has been no suggestion of that. I should like to confer with *by* associates.

The Court: How can it harm you. A limitation of what you are talking about is favorable.

Mr. Grosvenor: Mr. Thompson, will you state what it was. I did not hear exactly what you want to do. Do you want [fol. 268] to strike out that sentence?

Mr. Thompson: Just strike out that sentence, so the government can clarify the issues.

I also move to strike out paragraph D, which refers to a certain supplemental agreement. The government is satisfied from the evidence secured that that practice is not now followed by any local Film Board.

The Court: To that I take it there is no objection?

Mr. Grosvenor: No, I should like to consider it.

The Court: Paragraph D of page 48 may be stricken out. It is the sentence at the top of the page.

Mr. Grosvenor: Has he any evidence of those supplemental agreements? I doubt if he has.

The Court: The allegation, Mr. Grosvenor, is that "the members of said defendant Film Boards of Trade have entered into said supplemental understandings and agreements." He is going to strike it all out. What follows is a mere qualification of that allegation.

Mr. Grosvenor: But the statement that they have entered into the supplemental agreements is contained, your Honor in the previous sentences, and what he is striking out is the part "without the knowledge and against the general instructions of the defendant distributors and of the defend-

ant association." He has always admitted to us that instructions were sent to the branch managers not to enter into any of these understandings. This paragraph begins [fol. 269] on page 47, and deals with the alleged supplemental agreements by the branch managers.

The Court: Oh, I see. You do not want the whole paragraph stricken out.

Mr. Thompson: No, your Honor, just that one sentence.

The Court: What do you say, Mr. Grosvenor?

Mr. Grosvenor: I do not think that the government should change its position at this late date.

The Court: Have you got the evidence? What is your reason for it? You have not indicated to us the reason for it.

Mr. Thompson: The reason, your Honor, is that some of the documentary evidence which will be introduced appears to the government to establish not a direct agreement, but it is evidence of an understanding or implied agreement among the distributors that certain policies which are alleged as these supplemental agreements should be followed.

The Court: Motion denied.

Mr. Thompson: There is one preliminary matter, your Honor, that I wonder if you could not decide now. Reference was made in the opening statement of counsel for the defendants to the position taken by the Department of Justice in their previous investigation, and it appears to me that those subject matters have no proper place in the evidence in this case. I wish to state that counsel for the government can not agree with the position of counsel for the defendants.

[fol. 270] The Court: What?

Mr. Thompson: Counsel for the government can not agree entirely with the statement made by counsel for the defendants. It seems to me futile to have to introduce evidence as to what position was taken with reference to an earlier investigation.

The Court: If you can not agree upon it I can not settle it.

Mr. Thompson: It seems to me that it is immaterial to any issues in the case.

The Court: That may or may not be true. I will have to be advised of the government's course in that matter.

Certainly not from such evidence as has been taken in these cases——

Mr. Thompson: Certainly, if it were a criminal case or anything like that where intent might be material it would be——

The Court: It could be material in this case.

Mr. Thompson: Infent to do the acts that were done.

The Court: I do not suppose there was ever a case under the Sherman Act where intent was important. I can not advise government's counsel of the course to pursue. I can only rule on the evidence. You talk that over with Mr. Grosvenor.

Recess.

[fol. 271] Mr. Thompson: With reference to the introduction of the documentary evidence, the same stipulation applies as in the other case.

The Court: Have you a great many documents to offer, as you had in the other case?

Mr. Thompson: Yes, your Honor.

I might explain to your Honor with reference to putting in the exhibits now that at the present time we have not been able to arrive at any stipulation with reference to the effect of part of the documentary evidence. The files obtained by the government include specimens of various types of cases handled by the Arbitration Boards and enforced by the Film Boards, and they exemplify the procedure of the different Film Boards in enforcing the awards.

It is probable that on some of these types of cases on summary procedure, one or two cases could be selected by agreement, and then it could be stipulated that that case is typical.

On some other matters on which we are not able to stipulate, it might be necessary to introduce evidence from some of the other Film Boards.

But to start the case the government has selected files with reference to eight of the Film Boards. It will introduce those with the understanding that the others can [fol. 272] be put in later if necessary to establish points that can not be agreed upon as typical.

The Court: Your task now, I take it, is to read the stipulation on the record, and then to introduce these documents and identify them.

Mr. Thompson: Yes. This is the stipulation:

"All of the exhibits introduced by the Government are copies of papers taken by the Special Agents of the Department of Justice from the files in the offices of the defendants and the Film Boards of Trade, to which files the Government has been given the fullest access during the last four years, as stated in stipulation between counsel to be introduced.

"Counsel for the defendants desiring that the Government should have the fullest opportunity to put in any documents whatever that counsel for the United States may deem relevant, make no objections to the introduction of any of the exhibits now introduced, although counsel for defendants have not yet had an opportunity to read many of the documents, nor to the method of introducing them all in bulk without stating the purpose for which each of them is introduced, reserving, however, the right to object to the admissibility of any of them on the grounds of their irrelevancy or immateriality and on the further grounds that they are not binding upon the defendants or the Film Boards of Trade.

"The Government, of course, reserves the right in case specific objection is later made by counsel for the defendants to any of these papers introduced here, to call witnesses to furnish a foundation for the introduction of those papers or of the originals of which they are copies or call witnesses to testify to the facts stated in the documents.

"Furthermore, counsel for defendants requests the Government counsel to indicate which of the exhibits he offers for the purpose of attempting to prove the six alleged supplemental agreements described in the petition, pages [fol. 273] 48 and 49, paragraphs a, b, c, e, f and g, in order that defendants may know what, if any, explanatory or rebutting evidence may be necessary or advisable."

OFFERS IN EVIDENCE

I offer in evidence as Government's Exhibit 1, material taken from the files of the San Francisco Film Board of

Trade and from the files of members of that Film Board of Trade, including pages 1 to 108 inclusive.

(Marked Plaintiff's Exhibit No. 1.)

Mr. Thompson: I offer in evidence as Government's Exhibit 1-A material taken from the files of the San Francisco Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 95 inclusive.

(Marked Plaintiff's Exhibit No. 1-A.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 2 material taken from the files of the St. Louis Film Board of Trade and from the files of members of that Film Board of Trade, including page- 1 to 123 inclusive.

(Marked Plaintiff's Exhibit No. 2.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 2-A material taken from the files of the St. Louis Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 170 inclusive.

(Marked Plaintiff's Exhibit No. 2-A.)

[fol. 274] Mr. Thompson: I offer in evidence as Government's Exhibit 2-B, material taken from the files of the St. Louis Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 67 inclusive.

(Marked Plaintiff's Exhibit No. 2-B.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 3 material taken from the files of the Omaha Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 40 inclusive.

(Marked Plaintiff's Exhibit No. 3.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 3-A material taken from the files of the Omaha Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 110 inclusive.

(Marked Plaintiff's Exhibit No. 3-A.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 4 material taken from the files of the Memphis-Little Rock Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 58 inclusive.

(Marked Plaintiff's Exhibit No. 4)

Mr. Thompson: I offer in evidence as Government's Exhibit 4-A material taken from the files of the Memphis-[fol. 275] Little Rock Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 64 inclusive.

(Marked Plaintiff's Exhibit No. 4-A.)

Mr. Thompson: I offer in evidence as Government's Exhibit 5 material taken from the files of the Philadelphia Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 225 inclusive.

(Marked Plaintiff's Exhibit No. 5.)

Mr. Thompson: I offer in evidence as Government's Exhibit 5-A material taken from the files of the Liberty Film Corporation, a member of the Philadelphia Film Board of Trade, said exhibit consisting of one contract between the said company and Jack Flynn, dated August 31st, 1925.

(Marked Plaintiff's Exhibit No. 5-A.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 6 material taken from the files of the Kansas City Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 84 inclusive.

(Marked Plaintiff's Exhibit No. 6.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 6-A material taken from the files of the Kansas Film Board of Trade and from the files of members of that Film Board of Trade, including pages 1 to 137 inclusive.

[fol. 276] (Marked Plaintiff's Exhibit No. 6-A.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 7 material taken from the files of the New York Film Board of Trade, and from the files of the members of

that Film Board of Trade, including pages 1 to 71 inclusive.

(Marked Plaintiff's Exhibit No. 7.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 7-A material taken from the files of the New York Folm Board of Trade, and from the files of members of that Film Board of Trade, including pages 1 to 54 inclusive.

(Marked Plaintiff's Exhibit No. 7-A.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 7-B material taken from the files of the New York film Board of Trade, and from the files of members of that Film Board of Trade, including pages 1 to 10 inclusive.

(Marked Plaintiff's Exhibit No. 7-B.)

Mr. Thompson: I offer in evidence as Government's Exhibit No. 8 material taken from the files of the Montana Film Board of Trade, and from the files of members of that Film Board of Trade, including pages 1 to 395 inclusive.

(Marked Plaintiff's Exhibit No. 8.)

Mr. Thompson: Do you wish to state on the record the understanding?

Mr. Grosvenor: You state your case. You present your evidence.

Mr. Thompson: I mean the understanding about the ex- [fol. 277] hibits.

Mr. Grosvenor: If there is any understanding. To the extent that there is an understanding suppose you put it on the record.

Mr. Thompson: Merely, as I stated before, I believe not on the record, that these exhibits relating to eight Film Boards of Trade are introduced now by the Government's counsel for the government; and counsel for the defendants and counsel for the government ought to try to agree after the secretaries have testified with respect to these Film Boards of Trade either that the documentary evidence and the oral evidence with reference to any Film Board of Trade or with reference to any part of the operation of such Film Board is typical of all Film Boards of Trade. If agree-

ment can not be reached upon any matters which the government deems material the government is to have the right to introduce evidence with reference to those matters as to other Film Boards concerning which no evidence is put in now.

Mr. Grosvenor: That is from the exhibits that you have.

Mr. Thompson: From the exhibits which we have.

Mr. Grosvenor: Relating to the other Film Boards of Trade.

[fol. 278] Mr. Thompson: Relating to the other Film Boards of Trade, copies of which have been given to the defendant's counsel heretofore.

Besides these files with reference to the eight Film Boards the government will introduce as soon as the file can be gotten together and the copies prepared and checked for counsel for the defendants, this file consisting of general letters, bulletins, instructions and similar matters emanating from the home office of the New York office of the Film Boards of Trade.

Mr. Grosveror: No inference is to be drawn from that statement of counsel for the government that counsel for the defendants raise the right to call secretaries from other Boards than these eight.

Mr. Thompson: Also of course, with the understanding that the secretaries of other Boards are the ones we have the right to introduce the evidence, documentary evidence from those Boards.

Mr. Grosvenor: Yes.

Mr. Thompson: The government, your Honor, rests its main case now on the documentary evidence. Part of the reason for that is that a number of witnesses that are needed to make a complete presentation have not been obtained yet. Subpœnaes went out, and when it appeared likely that this case would not be heard these subpœnaes [fol. 279] were cancelled, and some of the witnesses have not come yet and will not be available yet. The evidence mainly is more rebuttal than the main case, so it is better to wait and put it in than to put it in piecemeal now.

The Court: But you do rest?

Mr. Thompson: Yes.

The Court: The government's case?

Mr. Thompson: Yes.

Mr. Grosvenor: Of course, that means that the witnesses you have called will only be in rebuttal?

Mr. Thompson: Yes.

Prima facie proofs closed.

Your Honor, I will follow in the beginning the order that we followed in the preceding case, of first reading the stipulation that the government has been given access to papers, and then the stipulation that the government admits that there is competition, and then the statement showing the production, reading the same from the other record.

[fol. 280] "The Government admits that:

"During the past two years the Department of Justice has conducted an investigation and examination of the activities and operations of the thirty-two Film Boards of Trade and of the members of such Boards, and of the operations of the thirty-two Boards of Arbitration, and of the defendant Association, the Motion Picture Producers and Distributors of America, Inc. During the past two years, the investigation has also covered the activities of the thirty-two Credit Committees of the Film Boards and the operation of the Credit Rules. During this entire period of two years, the defendants and their counsel have cooperated with the Department in every way possible to allow the Department to develop the actual facts fully and satisfactorily. The Department of Justice has been given access to all of the correspondence, files, records, minutes of meetings, and papers of the defendant distributors, the thirty-two Film Boards of Trade and all members of such Boards, and the thirty-two Boards of Arbitration and the thirty-two Credit Committees in the offices of the Film Boards of Trade or in the principal or branch offices of the distributors. The agents of the Department of Justice have examined such correspondence, files, records, minutes and papers at the office of the thirty-two Film Boards of Trade and at the principal and branch offices of the Distributors and at the office of the defendant Association, the Motion Picture Producers and Distributors of America, Inc. Such Special Agents have made examinations at such

times as they have been directed to do so by the Department of Justice. The agents of the Department have entered the offices of the Film Boards wherever located whenever they pleased, have examined such files as they selected, and have always been accorded the privilege of copying any document they wished to copy, and during the last several months, in order to expedite the preparation of this case for trial, they have been permitted to take the original documents from the files and from the offices of the Film Boards of Trade. The Defendants have cooperated in every possible manner to facilitate the investigation being conducted by the Department of Justice and its examination of all records and papers of Defendants and other persons interested in the motion picture business, both prior to the commencement of this action and subsequently.

"In pursuance of such investigation and examination, the Agents of the Department have taken from the files originals or copies of more than 30,000 documents relating to the activities of the Film Boards, the Arbitration Boards, the Credit Committees and the defendant distributors.

[fol. 281] "In the course of its investigation, the Agents of the Department have conferred with and examined over 1100 persons including producers, distributors, exhibitors, and others interested in the motion picture business."

"Referring to Paragraph X of the Answer, pages 10-14, entitled, 'Competition in the Industry,' the Government admits, for the purpose of this suit only and for no other purpose, and without reference to any other suit or controversy relating to the motion picture industry in which the United States may be a party, in which such other suit or controversy, if any, this admission and stipulation shall not be used, or have any effect, namely that:

"At all the time mentioned in the petition there has been, and there is today, competition throughout the United States in the distribution of motion picture films by the defendant distributors and by other distributors engaged in the motion picture business. At all such times the defendant distributors have been, and they are today, competing with each other, and with all other distributors

in the distribution of their pictures throughout the United States. [Answer, page 10.]

"In each of the states and parts of states in which the branch offices of the distributors operate as stated in the Petition, and in which the branch managers of such branch offices solicit the business of the theatres located therein and distribute the pictures of their several companies, all of the distributors distributing pictures therein, including the 10 defendant distributors, the 77 regional distributors named in the Petition and other distributors not named, are competing with each other in the distribution and for the exhibition of their pictures and they have been competing with each other at all the times mentioned in the Petition. [Answer, page 10.]

"Immediately after the announcement in the spring of each year of its program of pictures for the 12 months period commencing the following fall, each distributor proceeds to solicit and conclude as many contracts as possible for the exhibition of such pictures with the thousands of exhibitors who own or operate the 22,000 theatres in the United States. Each contract is a matter of negotiation and bargaining between the distributor and the exhibitor. The great majority in number of the contracts of each distributor are solicited by the branch managers or by their salesmen, but the acceptance of each application for a contract is subject to the approval of the home or principal office of each distributor. [Answer, pages 11-12.]

[fol. 282] "In negotiating and bargaining for contracts with exhibitors (the operators of theatres) in his territory, each branch manager finds all the branch managers and salesmen of the other distributors who are doing business in his territory competing with him on contracts for feature pictures, short subject pictures, comedies, specials and news reels. Similarly, when an operator of a motion picture theatre requires an individual motion picture for a date in the immediate future for which date no pictures included in his group contracts are available or needs a picture to complete his program each distributor who has a picture in his branch office available for such exhibition competes for the business and seeks through its branch manager and salesmen to conclude a contract with such

exhibitor. This is known in the trade as 'spot booking.' [Pet., p. 28; Answer, page 13.]

"The foregoing admission is not to be used in any other suit or controversy to which the Government is a party as the admission is made in this suit only. The Government does not admit that the above description applies to theatres owned or controlled by individual distributors. The stipulation does not apply to any of the agreements alleged in the Petition."

Referring to paragraph relating to production of pictures (Answer, page 12 and Answer, page 16):

It is stipulated by counsel that the annual publication known as the Film Daily Year Book is recognized in the motion picture industry as the authority for statistical information relating to the industry and that counsel for defendants may read into the record from the Year Book the following statistics relating to the production and distribution of pictures in proof of allegations of the Answer contained on pages 12 and 16 of the Answer:

"Feature Releases"

"Year	Number released
"1928	820
[fol. 283] "1927	743
"1926	740
"1925	579

"The year Book for 1929 states the titles, names of distributors and release dates of 10,500 feature productions released between January 1, 1915 and January 1, 1929, thus showing an average annual production of 700 features during the past 15 years.

"Short Subjects

"The Year Book for 1929 states (p. 480): 'Short subject production of 35 distributors for the season 1928-1929, including newsreel, serial and regular releases, total approximately 3,000 subjects, counting each release as a separate subject.'

"Short Subjects

1926	2373
1925	2395

"In proof of the allegation of the answer that this distributor produces enough pictures for the average theatre, the average theatre uses 200 pictures, I have prepared a table showing the production of each distributor taken also by the Film Daily which I will read. This is also in proof [fol. 284] of page 12 and page 16 of the Answer."

This is a table showing the number of pictures released by the principal companies in 1928:

**Paramount Famous Lasky Corporation	64
Metro-Goldwyn-Mayer Distributing Corp.	52
First National Pictures, Inc.	53
Universal Film Exchange, Inc.	56
United Artists Corporation	15
Fox Film Corporation	49
Pathe Exchange, Inc.	53
F. B. O. Pictures Corporation	62
Vitagraph, Inc.	26
*Educational Film Exchange, Inc.	0
*This company releases short subjects	
Columbia Pictures Corporation	32
Excellent Pictures Corp.	10
Gotham Productions, Inc.	11
Rayart Pictures Corp.	26
Tiffany-Stahl Productions	27."

"To prove the number of news reels, as alleged in the answer (page 12), I produce a statement showing the production of news reels in 1928 by the following companies:

"Pathe two each week, total 104

"Fox two each week, total 104.

"Metro two each week, total 104.

"Universal two each week, total 104.

"Paramount two each week, total 104.

"Educational two each week, total 104."

aggregating a total of 624 news reels by the six companies, as alleged in the answer.

Referring to paragraph eleven of the Answer (page 14) entitled: "The use of written contracts in the industry; the manner in which the standard exhibition contract came into being."

[fol. 285] Counsel for the Government admits the paragraphs on pages 14 and 15 and part of 16, as follows:

"From the beginning of the motion picture industry the agreement between the distributor and exhibitor has been in the form of a written contract. In this respect the motion picture industry probably differs from every other industry.

"In respect to each picture, the exhibitor (the owner or operator of a theatre), acquires a license under copyright to exhibit the picture at a specified theatre for a limited number of days stated in the contract (Pet., p. 84). He acquires nothing more than the right to use for a limited time the property of the distributor which must be returned promptly to the owner at the conclusion of its use for a like use by other exhibitors who have acquired a similar right in the same picture. The motion picture print moves either on a circuit from place to place, being exhibited at each place, or back and forth between distributor and exhibitors."

"As a rule, the exhibitor contracts with a distributor for a group of pictures, varying in number from 20 to 60 (Pet. p. 27), to be produced and released or made available for exhibition at regular intervals over a period of one year. The contract is negotiated and concluded prior to the production of most of the pictures and before their release date, except in case of spot bookings of single pictures. Therefore it is necessary to provide in the contract for the selection or designation of playdates as the pictures become available for exhibition. This arrangement requires a clearly drawn provision and cannot be trusted to verbal agreement. Other subjects, among others, on which complete agreement between the parties is necessary are matters relating to the time and place of exhibition, the rental and payment therefor, the delivery and return of prints, the protection and run periods, loss and damage to prints, description of photoplays, exhibition and advertising, delay in or prevention of performance and admission prices.

"For these reasons it has always been the accepted practice in the industry to put all exhibition agreements in the form of written contracts, all persons interested, exhibitors and distributors, recognizing from the beginning of the industry that otherwise there would be continuous misunderstanding in the dealings between the exhibitor and the distributor.

[fol. 286] "An exhibitor uses feature pictures (5 reels or more, constituting the backbone of a program), short subjects (2 reels), comedies (2 reels) and news reels (1 reel). It is and has been the custom for many years to contract separately for each of these classes of pictures."

The Government also admits:

"No distributor in the course of a year distribute.. sufficient feature pictures to supply the average exhibitor's program. The average exhibitor uses under 200 feature pictures and 350 short subjects (news reels, comedies and novelties). No distributor releases more than 75 features pictures while some release only 12 annually. Therefore the average exhibitor contracts in the course of a year with from 5 to 15 distributors who actively compete for the business as heretofore stated. While the average exhibitor signs 25 to 50 contracts, many exhibitors sign more than 50 contracts in the course of a year.

"The description given above has applied to the business as carried on for many years.

"Prior to 1922, the contracts of the various distributors contained many dissimilarities. For example, referring to the subject 'Selection or designation of playdates' (Pet., p. 87) which is one of the most important and, at the same time, most complicated of the matters covered by the contract, this was not uniform as between the different distributors. If an exhibitor had contracts with 10 different distributors, he found it necessary to consult each contract as a picture under it became available in order to comply exactly with the provisions in that contract relating to the designation of playdates. Failure to do so resulted in breaches of contract."

[fol. 287] GABRIEL L. HESS, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am the general attorney of the Film Boards of Trade, and general attorney of the Motion Picture Producers & Distributors of America.

I have been connected with the motion picture industry since 1916. During that period I have given my entire time to the problems of the motion picture industry. I became counsel for the Paramount Distributing Corporation in 1916. I held that position until 1917 when the Goldwyn Pictures Corporation was formed I became general counsel for that corporation. I was with Goldwyn until Goldwyn merged with Metro Pictures Corporation in the spring of 1924. I remained as counsel for the merged corporations until the end of September, 1924, when I became counsel for the Motion Picture Producers and Distributors, and for the Film Boards of Trade.

During this period of thirteen years I have dealt with business problems and legal problems of the motion picture industry. As general attorney for the Film Boards of Trade I supervise the operations of the Boards throughout the country; I advise the secretaries on legal problems that they meet; I instruct them as to the limitations of the operations of the Film Boards of Trade under the Rules of Arbitration. I confer with them at their convention and advise them as to the terms and conditions of the standard contracts.

In the summer of 1922 when I was general counsel for Goldwyn Distributing Corporation, I remember participat- [fol. 288] ing in conferences relating to the preparation of a uniform contract. I participated as counsel for my corporation. I believe those conferences lasted from the spring or early summer of 1922 until the early spring of 1923.

Shortly after the Motion Picture Producers and Distributors organization was organized the exhibitors in this territory and from other territories throughout the country

upon the election of Mr. Hays to the presidency of the Motion Picture Producers and Distributors Association requested conferences with a view of solving some of the difficulties that were confronting the exhibitors, and doing away with some of the abuses that they claimed existed in the business; and principally to devise and to agree upon, if possible, a uniform standard contract; and to devise some plan to do away with what they claimed was a pernicious practice of demanding deposits and security for the performing of contracts at the time the contracts were entered into. The exhibitors claimed there were difficulties arising out of the diversified characters of the contract. They stated in a general way that if they entered into four or five, and sometimes six or eight different contracts with different distributors the exhibitors never knew at any time the conditions of each of these contracts, because the contracts were long and very closely printed in fine type, and that each distributor had expressed in its form of contract a policy peculiar to that distributor. The exhibitors stated that if there was a uniform contract they could study its terms and know exactly what their obligations would be, and [fol. 289] they would not have to bother about reading each contract with each distributor that they did business with. Looking over these forms of contracts in use prior to the Uniform Contract, this is the form of contract that was used by the Associated First National Pictures.

(Contract offered in evidence and marked Defendants' Exhibit A.)

This is a form that was used by the Famous Players Lasky Corporation, which was the predecessor in title of the Paramount Famous Lasky Corporation, one of the defendants.

(Contract offered in evidence and marked Defendants' Exhibit B.)

This is the form that was used by the Fox Film Corporation. This was a form for feature pictures.

(Contract offered in evidence and marked Defendants' Exhibit C.)

Here is another form of the Fox Film Corporation for a series of pictures which they designated as Twentieth Century Pictures.

(Contract offered in evidence and marked Defendants' Exhibit D.)

Here is another form of the Fox Film Corporation for one picture, "The Connecticut Yankee."

(Contract offered in evidence and marked Defendants' Exhibit E.)

Here is a form that I prepared myself of the Goldwyn-Cosmopolitan Distributing Corporation for the distribution of Cosmopolitan Pictures.

(Contract offered in evidence and marked Defendants' Exhibit F.)

Here is another form I prepared myself for the Goldwyn Distributing Corporation for feature pictures.

(Contract offered in evidence and marked Defendants' Exhibit G.)

Here is another form of Goldwyn Distributing Corporation that I prepared for the pictures that are specified in the schedule.

(Contract offered in evidence and marked Defendants' Exhibit H.)

Here is a form that was used by the Universal Pictures Corporation for their Jewel productions.

(Contract offered in evidence and marked Defendants' Exhibit I.)

[fol. 290] Here is a form that was used by Metro Pictures corporation, a general form for feature pictures.

(Contract offered in evidence and marked Defendants' Exhibit J.)

Here is another one used by Metro-Goldwyn different from the last.

(Contract offered in evidence and marked Defendants' Exhibit K.)

Here is one that was used by Pathe evidently for short subjects from the title.

(Contract offered in evidence and marked Defendants' Exhibit L.)

This was one that was used by the Select Pictures Corporation for the sale or rental of Selznick pictures that are specified in the schedules.

(Contract offered in evidence and marked Defendants' Exhibit M.)

Here is a form that was used by the United Artists Corporation, that is shorter than any of them.

The Court: You can see that.

(Contract offered in evidence and marked Defendants' Exhibit N.)

Here is another United Artists Corporation form.

(Contract offered in evidence and marked Defendants' Exhibit O.)

Then here is a short subject contract used by the Universal Corporation.

(Contract offered in evidence and marked defendants' Exhibit P.)

Here is a form for Star series of pictures used by Universal.

(Contract offered in evidence and marked defendants' Exhibit Q.)

Q. Mr. Hess, were exhibitors doing business, or was the same exhibitor likely to do business with all of these people [fol. 291] in the course of the year?

A. Yes, if not with all, with a great number of them.

Q. Will you point out in just a few minutes to his Honor some of the differences in those contracts. For instance, take the clause for damage in the event that a print is lost

or damaged. Loss or damage to a print, what was the charge per foot?

A. Let me take one of the contracts that I drew, and I think I can get that quicker.

In this contract that was used in 1921 it provides for the payment of liquidated damages at the rate of four cents for each linear foot for any print lost or damaged, or injured or destroyed. That is marked Exhibit H.

The rates of the other distributors at that time were different.

Here is one of the Goldwyn Distributing Corporation where the rate was six cents per linear foot.

[fol. 292] The Universal Jewel form the first clause shows fifteen cents per foot. The amount charged by the distributors ranged between four cents on one contract and fifteen on the other. They had different amounts specified. Pathe short subject license charge per foot paragraph four, was fifteen cents.

Mr. Grosvenor: I have prepared a statement which I will put in, your Honor, and not take your Honor's time. I have had here prepared a statement showing the clauses in many of these contracts which I referred to in the opening this morning, authorizing the distributor to cancel the contract or suspend the service in the event of any default or to demand $250 at any time that he saw fit or even $300. For instance, the Associated First National organization at paragraph 11,—I will put that in evidence, this summary.

Metro, clause 15 provides that the distributor reserves the right to demand and receive from the exhibitor at any time the sum not to exceed $250 as security for the faithful performance of this agreement by the exhibitor. In the event of the failure of the exhibitor to furnish such security [fol. 293] demanded within seven days after demand this agreement at the option of the distributor might be terminated and cancelled.

The Associated First National clause 11 reads:

"The distributor reserves the right to demand and receive from the exhibitor cash security in an amount to equal the value of the films at any one time in possession

of the exhibitor not to exceed $500 as protection for its property while in the possession of the exhibitor, and in the event of the failure of the exhibitor to furnish and deliver such security to the distributor within seven days after written demand made by the distributor upon the exhibitor, this contract shall, at the option of the distributor, upon written notice to that effect mailed by the distributor to the exhibitor, be deemed ipso facto terminated and cancelled and at an end without further liability on the part of the distributor."

The Famous Players contract, paragraph 6 provides:

"If the exhibitor shall default in the performance or observance of any term, agreement or condition herein contained, or in the performance of any other contract now or hereafter existing between the parties hereto, the distributor may withhold delivery of any pictures until such default shall have been cured, or may terminate this agreement and license by mailing or delivering to the exhibitor a written notice of its intention so to do, and may retain all moneys theretofore paid by the exhibitor hereunder. The rights and remedies herein enumerated shall be in addition to and not in lieu of any other provisions hereof and any other rights and remedies which the distributor may have at law or in equity."

Mr. Grosvenor: We will not take any more time on these. I will offer in evidence, your Honor, a summary of some quotations from the contracts.

[fol. 294] Summary offered in evidence and marked Defendants' Exhibit R.

Mr. Grosvenor: This summary is prepared for the purpose of condensing the record, so we will not have to copy these contracts in the record. It is simply a quotation of some of the paragraphs from these numerous contracts; and to these clauses that relate to advance deposits, suspension of service, and termination of service, and the right to demand an additional payment on account at any time.

The Court: They will be taken subject to correction. If no corrections are made we will assume they are correct. If no corrections are made in the briefs or upon the record.

In answer to questions by Mr. Grosvenor:

I will give a brief statement of what transpired at these conferences, and what was done, and what was the final result from 1922 until the spring of 1923. Also the problems discussed and considered, and who was there. The two principal problems and questions raised by the exhibitors were, first, the deposit system of the distributors requiring an advance payment anywheres from ten per cent to fifty per cent of the total film rental provided for in the contract as security for the performance of the contract upon its execution; and, secondly, the problem of the diversity of conditions in the contracts then in use in the business.

These conferences were attended at different times by a great number of exhibitors. I remember two or three that I attended where there were twenty or twenty-five people in the room. I think Mayor Walker represented a group of exhibitors at some of these conferences and there were ex-
[fol. 295] hibitors from different parts of the country. The Theatre Owners Chamber of Commerce participated in these conferences and were principally interested because it was at their instigation that these conferences were arranged.

Finally, at one of these conferences the exhibitors were asked what they suggested as a substitute for the practice in the past of requiring exhibitors to put up deposits; and in response to that question they suggested an arbitration clause.

I believe it was just about that time that Judge Grossman, who was in contact with these exhibitors, had undertaken the organization of the first of the arbitration associations, and Judge Grossman and Judge Guy, formerly of the Supreme Court, they suggested that any differences or disputes that would arise between the distributors and exhibitors could be arbitrated.

To that suggestion the question was asked "well, how can the distributors be protected, and how can the awards, if any, that are made by the arbitrators, be enforced?"

In response to that question the exhibitors offered and suggested that a provision be made in the arbitration to the effect that if an exhibitor having been found by a Board of Arbitration to have breached his contract or done

anything in violation of his contract, or failed to comply with the direction in the award of the arbitrators that then all distributors with whom he had contracts should be placed in the position of requiring security from him for the performance of his contracts; and they argued that that was simply a substitution for the then existing system of requiring from all distributors advance deposits, and postponing the time of the requirement of putting up the deposit to the [fol. 296] period when it would be determined that the exhibitor had breached the contract.

They said, in other words, "You are now classing us as a bad class of risk. You have signalled us out as peculiar to the business world, to require us to pay a deposit to secure the performance of this contract. We want to be placed on the plane with all honest business men, but we offer that if it is found by a fair tribunal that we have breached our contracts, then you should be placed back in the position that you are in today of requiring of all of us who are doing business with you a security for the future performance of the contracts."

And out of those suggestions there was agreed upon the first uniform contract, which contained the arbitration clause, and the rules of arbitration. That Exhibit A of the petition is the first uniform contract, Exhibit D is the by-laws that were adopted at that time. When these conferees agreed in principle upon the idea that had been discussed it was suggested that some well known firm of attorneys be called in to draft what the distributors and the exhibitors could agree upon as an arbitration clause; and it was also suggested that the Film Boards of Trade be organized.

At that time there were throughout the country so-called Film Clubs, some of them social organizations of the branch managers; and some of them that dealt with business problems, but no uniformity as to their organization. They would spring up and die out, depending upon the spirit of the branch managers in the locality where they had been organized.

[fol. 297] When they had agreed upon this principle, Mr. Wickersham's firm was asked to prepare the arbitration clause; and that was the first time I believe that I met you. The matter was referred to you by Mr. Wickersham, and from that point on there were many additional conferences

as to the terms of the arbitration clause, and as to the terms of the contract, and particularly as to the terms of the by-laws of the Film Boards of Trade, which were set up as the means of enforcing awards.

There was a committee of exhibitors negotiating with the committee of distributors at all times, both sub-committees and larger committees. There was at that time in existence an organization of national scope called Motion Picture Theatre Owners of America. They were in on these negotiations, by their representatives. Then there was the local organization here in New York, then there were representative exhibitors from different localities, some of them representing their State organizations.

All distributors were represented there by their counsel or general sales manager or somebody. In the spring of 1923, after we reached agreement the new form of contract was used by some of the distributors. Not all of them used it. During 1923 and 1924 the distributors gradually adopted the uniform contract. By 1924, practically all of them had adopted, in principle, the uniform contract, and an arbitration clause, and the Film Boards of Trade had been organized, and the By-laws relating to arbitration had been adopted, but in adopting the uniform form of contract, the distributors continued to add clauses, either in modification [fol. 298] of the clauses in the contract or in amplification of them or in addition to them.

I believe it was in the beginning of 1925, yes sometime in 1925, the exhibitors and exhibitors' organizations principally, then began their demands for the reformation of the uniform contract, because of the many changes that had been made by the distributors, and new negotiations were started, new committees were appointed, and the negotiations, which then started, and lasted, I believe, until early in the year 1926.

In answer to question by the Court:

They began in the summer of 1925.

In answer to questions by Mr. Grosvenor:

The paper, a typewritten sheet with a dozen signatures on it you show me, is a statement signed by Jules H. Michael, who was president of— It is an agreement, ap-

proving the new Standard Exhibition Contract, that was entered into, at what we describe as the Union League Club meeting of the representatives of the exhibitors organizations and Mr. Hays who, at that meeting representing the distributors.

It was signed by Mr. Jules Michael, who was president of the Motion Picture Theatre Owners of the State of New York, Buffalo Zone; Mr. H. M. Ritchie, who was the general business manager of the Motion Picture Theatre Owners of the State of Michigan; Mr. Frank J. Rembush, who was president of the Motion Picture Theatre Owners of the State of Indiana. Mr. H. A. Cole, who was president of the Theatre Owners of the State of Texas. Mr. Julian Brylawski, who was president of the Motion Picture Theatre Owners of the District of Columbia and Maryland. Mr. J. M. Seider, who was president of the Motion Picture [fol. 299] Theatre Owners of New Jersey; Mr. R. R. Beachley, who was president of the Motion Picture Theatre Owners of Kansas and Missouri; Mr. Charles O'Reilly, who was president of the Theatre Owners Chamber of Commerce of New York City and W. A. Steffes, who was president of Motion Picture Theatre Owners of the Northwest,—I believe that is the corporate title, I am not certain of it, which comprised the States of Minnesota and North and South Dakota; Mr. R. F. Woodhull, who was president of the Motion Picture Theatre Owners of America, the national organization of exhibitors. There was at that time only one national organization of exhibitors. The other organizations mentioned were the largest and most representative organizations of exhibitors in the country.

These men had been appointed by these organizations to act on this committee, and I believe they represented other exhibitor organizations at this conference.

(Statement approving standard Exhibition Contract offered in evidence and marked Defendants' Exhibit S.)

Mr. Grosvenor: You have a copy of that, Mr. Thompson; it is Exhibit 1 of the answer.

The Witness: The gentleman present made a statement to the press on that day. Exhibit 2 of the Answer is the

statement that was issued; it was agreed upon at the meeting and it was issued to the press.

Mr. Grosvenor: I offer that in evidence. I have not the original here. I will offer a copy of the original; do you object to it?

Mr. Thompson: I would like to ask a few questions before it is received.

In answer to questions by Mr. Thompson:

I was present at the meeting when the statement was prepared. I know that this exhibit is a correct copy of that [fol. 300] statement. A draft of it was made and corrections were made by eight or ten or twelve men in the room and it was finally agreed upon and typed and issued to the press.

Q. The ones signing, were not the only ones present who took part in the discussion, were they?

A. Oh yes, Mr. Hays and myself, and, I believe, Mr. Pettijohn were present at the meeting. We did not sign that exhibit, I mean that has just been offered in evidence, S. This exhibit 2 was issued as a press report from the Motion Picture Producers and Distributors of America and it was drawn up and agreed to at the Union League Club meeting in the room where we held our meeting.

(Copy of statement offered in evidence and marked Defendants' Exhibit T.)

That is Exhibit T, a statement issued to the press. Exhibit S states that "the undersigned today have approved a new standard exhibition contract. This contract shall be put into use immediately. Concurrent with this approval an arrangement has been effected for the appointment of an advisory committee to consult with the Motion Picture Producers and Distributors of America, relative to still further improving the contract, if possible. This advisory committee consists of the following: "Charles L. O'Reilly, R. F. Woodhull, W. R. Steffes, and E. V. Richards."

That committee conducted negotiations regarding the improving of the contract. I participated in those conferences. This Standard Exhibition Contract of March

1926 was adopted by all the distributors and used at the beginning of the selling season that year, which I believe, [fol. 301] began comparatively early. The distributors again made additional clauses,—added additional clauses to the contract, and upon complaint of one or two of the members of the advisory committee, a meeting of the committee was called, to meet with the distributors, to take up these additional clauses. That meeting was held, and an agreement reached; some of the clauses were stricken out; some were agreed upon by the advisory committee; I have a complete set of the minutes of that meeting in my files over there, at the table.

This typewritten statement dated May 18, 1926, with a yellow sheet on top of it, is a statement of the result of the meeting of the advisory committee.

(This statement later introduced in Evidence as Defendants' Exhibit M 1.)

Q. What was the main subject of discussion between the distributors and the exhibitors during this period; what were you all trying to get at?

By the Court:

Q. What period?

Mr. Grosvenor: 1926, the period of these conferences referred to in February—in the spring of 1926.

The Court: And the summer of 1925 and the fall of 1926?

Mr. Grosvenor: No, from February 1926; that is Exhibit S. It is in the answer there at page 54, Mr. Hess, on through to May 1926; when this statement, which has been excluded was signed, what were the difficulties——

The Court: Those, I take it, were the considerations of the advisory committee?

[fol. 302] The difficulties after the uniform contract was adopted, before the first standard exhibition contract, and immediately after the 1926 standard exhibition contract was that the distributors were adding a number of clauses that changed or modified the contract and the exhibitors were insisting upon the distributors adopting and using the standard exhibition contract which had been agreed upon. They recognized—some distributors or exhibitors recognized, that some distributors, because of peculiar

business policies, had to have additional clauses, and all those clauses were discussed and agreed upon at this meeting of the advisory committee.

Many of the additional clauses that were used, were withdrawn by the advisory committee.

I remember, particularly, the United Artists Corporation, that has a policy of selling only one picture at a time, putting an additional clause in to cover that business policy.

[fol. 33] That was first objected to by the advisory committee of exhibitors, but when the distributor, the United Artists representatives explained their position, that objection was withdrawn.

Then there was an objection to the so-called standing order clause that had been added to contracts by several of the distributors. There was an objection made to that clause, and finally after they had talked it over at this conference, the reasons for the clause and its provisions, the exhibitors made a suggestion as to an amendment, and that a uniform standing order clause be agreed upon, which was done at that meeting.

The dissatisfaction of the exhibitors was created by the failure of the distributors to use only the standard exhibition contract that had been agreed upon in February, and their use of these additional clauses. That was finally straightened out.

These objections were all made at the meeting with the advisory committee in May of 1926. Furthermore, at that meeting, there was raised the question by the exhibitors' representatives, that the distributors were filing stale claims before the Boards of Arbitration. A great many stale claims were being filed by the distributors. It was suggested that the so-called statute of limitations be inserted in the rules, limiting claims to a period of one year from a breach of a contract. That was agreed upon.

Furthermore, the exhibitors took the position that the Boards of Arbitration should be definitely given the right to restrain distributors from anticipatory breaches of con-[fol. 304] tract, because many exhibitors, for example, who had contracted for a particular run of a picture, or had received a stated amount of protection after the exhibition of the picture, had those provisions of their contracts vio-

lated by distributors, and they wanted the Boards of Arbitration to be in a position to direct, by their award, a distributor to refrain from breaching a protection provision or from breaching a run provision, and to give the Boards of Arbitration the power to compel them to deliver a picture that had been contracted for, which the distributor threatened to withhold from an exhibitor.

All those conditions were pointed out, and it was agreed, as set forth here, in the second paragraph of that last exhibit, that the rules should be amended or arrangements made "whereby Boards of Arbitration are given equity power to the extent of restraining anticipated breaches of contract by distributors or other exhibitors."

In connection with that, I may say that part of the exhibitors' complaint was that when they had a complaint against another exhibitor, who by his acts, would breach a contract that the exhibitor had with the distributor they wanted to be in a position to restrain that breach.

I am referring now to where a number of exhibitors had either successive rights or rights in conflict with another exhibitor in a particular picture, and they could not show the picture until the previous exhibitor had shown it.

An example is this: A distributor would enter into a contract with an exhibitor, for example, granting him a [fol. 305] first run in the locality of his theatre. The distributor's representative would make a duplicate of that contract with another exhibitor. There could not possibly be two first-runs in one locality, so the exhibitors wanted to be in a position that, upon the threat of the distributor to deliver the picture to the second exhibitor, to have the Board of Arbitration order the distributor to deliver it to the first exhibitor, who had the contract first, and was entitled to the picture. Or, for example, an exhibitor was given a ten, twenty or thirty-day protection, which means that the picture should not be shown within a stated radius or neighborhood or zone for thirty days after the exhibition of the picture by the exhibitor, and the exhibitor learned that the distributor was going to deliver that picture in five days or ten days of fifteen days, or any time within the period to another exhibitor, who was entitled to it under his contract. They wanted to be in a position to have the Board of Arbitration restrain the distributor from delivering that picture before the expiration of the

protection period. Another example, if an exhibitor had a picture under contract and had advertised it and had received a date for it, they wanted to compel the distributor —have the Board of Arbitration compel the distributor to deliver that picture on that date, so that the exhibitor would not lose the good will of his patrons, having advertised a big picture at his theatre, when he could not exhibit it.

In answer to questions by the Court:

The manner those Boards apply the principles of law is: they examined into those questions very carefully. Prac- [fol. 306] tically all of the complaints that are made by exhibitors against distributors, before these Boards are in this class of cases, and invariably the exhibitor, if his contract gives him the right, he claims, the awards are made in favor of the exhibitor. These men on the Boards are practical men. They are composed of three exhibitors and three distributors. They know the business, know the terms of it and conditions of it. They know conditions particularly that are local to their territory, and they know that if a distributor makes a contract with exhibitor A to deliver a picture for a first-run, and that same distributor makes a contract with exhibitor B for the same run at a subsequent time, that the man whose contract is dated prior to the other exhibitor's is entitled to the picture, and they follow that rule. B, then, would be in a position to make a claim for damages for failure of the distributor to deliver the picture, and they give him damages.

(Adjourned to March 15th, 1929, 10:30 A. M.)

New York, March 15th, 1929—10:30 A. M.

Trial Resumed

Gabriel L. Hess resumed.

Direct examination.

By Mr. Grosvenor (continued):

A. Discussing the questions that were discussed at the meeting of the advisory committee in regard to additions

that were made in the contract—the 1926 contract. I have some notes that I made at the time of that meeting. I would like those to refresh my recollection.

One of the first suggestions that was made, after the uniform contract (Exhibit A of the petition) had been in use for some time, was that there should be a warranty in [fol. 307] the new contract because of the fact that warranty that the contract contained all the clauses agreed upon,—because of the fact that the exhibitor said that while the uniform contract idea had been adopted, many of the distributors had not followed the uniform contract and had added clauses, which were either in modification or amplification of the uniform contract.

And the first suggestion was that there should be a warranty made by the distributors to the effect that the contract contained all the clauses. To that suggestion, the distributors agreed, with the modification that if they wanted to add any clauses because of the peculiar business policies of each distributor, the attention of the exhibitor be called to it in the warranty clause, by specifying what clauses were added, and that was the reason for this first clause in Exhibit B of the petition.

The paragraph that is in italics:

"First: The Distributor warrants that there is contained herein all of the numbered Articles of the 'Standard Exhibition Contract' filed with the Motion Picture Producers and Distributors of America, Inc., identified by the signature of its President on the 1st day of March, 1926. Articles — hereof are in addition thereto."

After the distributors adopted this Standard Exhibition Contract, they added articles and it was the claim then made by the exhibitors that these articles, while they were specified as added articles, were in modification or in contradiction of some of the articles of the contract. Therefore this meeting of the advisory committee was called, and all of these added clauses of all the distributors were taken up, one at a time.

[fol. 308] I am now referring to the latter part of May 1926.

In answer to questions by Mr. Grosvenor:

For example, First National Pictures had added a clause to this effect:

"It is expressly understood and agreed that during the term of this agreement the distributor shall have the right to release for general exhibition photoplays designated by the distributor as specials, as such term is commonly used by the distributor, featuring any of the stars of any of the photoplays specified in the schedule but not to exceed four in number, nor more than one of any such star provided that the distributor shall make an announcement in trade papers to such effect before actual photographing of each such special photoplay shall commence, in which case such special photoplay shall not be included in this agreement; and the number of photoplays of any such star specified in the schedule shall be reduced by one."

There was a strong objection made to that by the exhibitors, because they stated, when they were contracting for pictures for stars they expected to receive those stars, and they felt the distributor should not be placed in the position of having the right, having contracted for a star picture and having made a picture which in the opinion of the distributor was an outstanding picture, to withdraw it and sell it as a special.

Only the First National was using that clause. This was an added clause by First National to its contract. To its standard contract. At this meeting when the objection was made the clause was withdrawn; and they offered a substitute. After discussing the substituted clause that was withdrawn; then the suggestion was made that the substi- [fol. 309] tuted clause could be used if it was not in conflict with the provisions of the standard contract, and the Advisory Committee, that is the committee of exhibitors, suggested that if the clause is used it should be imprinted or stamped in red ink on the schedule of the contract.

Each contract, when the standard exhibition contract was adopted by the distributors, had in addition to the printed matter, a space which they called a schedule in which they could enumerate the title of the picture, a short description of the picture, whether it was a star picture or a director's picture, or a picture based upon a well-known play or

novel; and a space for the amount of film rental that the exhibitor was to pay; the number of consecutive days he was to play it, and two or three other columns for matters that would be agreed upon between the exhibitor and distributor relating primarily—purely to the terms and conditions of the license.

They said that if they would print this additional clause in red the exhibitor's attention would be called to it, and they would withdraw their objection to the substituted clause.

There was another clause that the First National had added, and the Advisory Committee agreed that it was not in conflict with the provisions of the standard contract; and therefore could be used.

Then there was a distributor known as the Associated Ex-[fol. 310] hibitors. The Advisory Committee agreed that the additional clause of this Associated Exhibitors Contract designated as third was a mere direction to the exhibitor to pay the rentals specified in the contract to Pathé Exchanges, as the agent for Associated Exhibitors, and accordingly was not in conflict with any of the provisions of the standard contract.

At the suggestion of the Advisory Committee, Associated Exhibitors agreed to withdraw the additional clause designated as four.

Then Pathé had some additional clauses. The Advisory Committee of exhibitors agreed that their additional clauses designated as twenty-third and twenty-fourth were not in conflict with any of the provisions of the standard contract; but suggested—that is the Advisory Committee of Exhibitors suggested that the provisions of the additional clause twenty-three should be imprinted in red in the schedule, which suggestion was accepted and agreed to by the Pathé.

The Educational Film Exchanges had a clause; and at the suggestion of the Advisory Committee of Exhibitors this additional clause twenty-three was withdrawn; and in substitution the following additional clause was agreed to by the Advisory Committee of Exhibitors and Educational. They agreed upon this twenty-third clause to agree that the several photoplays and series covered by this agree-[fol. 311] ment are separately contracted for, and the terms

and conditions for the license thereof have been set forth in a single instrument for the mutual convenience of the parties thereto, provided, however, that the application shall be considered as entirety, and shall be accepted or rejected as a whole. The exhibitor agrees that upon request of the distributor he will execute individual instruments covering the agreements as to each series of each photoplay covered hereby; and hereby authorizes any officer of the distributor or authorized agent as his attorney in fact to execute such individual instruments upon the exhibitor's failure to do so.

That was for the particular reason that—I will tell you the reason for this—as an example of these additional clauses the Educational Film Exchanges are distributors of short subjects exclusively. They do not distribute anything but short subjects and news reels. They produce I think—I do not think they produce any of their own pictures. They distribute the short subjects of producers who are independent but who release their pictures through Educational Exchanges; and therefore, it was Educational's contention that it was necessary for their bookkeeping purposes to properly account to the many individual producers that were releasing their pictures through Educational to have this clause; so that when Educational sold a series of 104 [fol. 312] comedies made up of comedies which were produced by individual separate producers, and independent of each other, they could make proper records by segregating the contracts, although the contract for 104 was all one instrument.

The Advisory Committee of Exhibitors agreed to that, agreed that that was their policy, and consented and agreed to the clause. Then there was another clause used by Educational that the Advisory Committee of Exhibitors agreed to, but suggested that it be imprinted in red ink on the schedule.

The clause had to do with the rate at which the releases would be played. It reads:

"It is agreed that the exhibitor shall exhibit and pay for all the photoplays specified herein at the rate of (blank) One reel release every (blank) week; and (blank) two reel releases every (blank) week."

That was purely a playing arrangement, and did not affect the terms of the standard contract which the Advisory Committee of Exhibitors agreed upon.

Then the Fox Film Corporation had a number of clauses that were added to the standard contract. One of their clauses was added as Article No. 23, providing for the order of the release of the pictures contracted for.

I might say at this point that Fox used three or four separate forms of Standard Exhibition Contract for its [fol. 313] different classes of pictures. They had one form for super-specials; they had a form for Tom Mix and Buck Jones, and they had a form for short subjects; and they also had a form for news reels of the standard forms with different added clauses peculiar to the subjects which were to be contracted for under those forms.

As to the super-specials No. 23 they added, that was agreed to by the Advisory Committee of Exhibitors. This same clause of the Standard Exhibition Contract for Tom Mix and Buck Jones pictures for the super-specials and short subjects was agreed to by the Advisory Committee of Exhibitors; but this same clause for the news reels, at the suggestion of the Advisory Committee of Exhibitors, was withdrawn by the Fox Film Corporation.

For the Tom Mix and Buck Jones the additional clause designated as Article Sixth for Tom Mix and Buck Jones and for specials was agreed to by the Advisory Committee of Exhibitors providing the word "month" in the clause be eliminated, and in place thereof there be substituted a blank space to be followed by the word "weeks" to enable the exhibitor in each case to agree with the Fox Film Corporation upon the intervals between the playing of each Tom Mix and each Buck Jones and each special picture, such intervals, however, to be not less than five weeks.

[fol. 314] At the suggestion of the Advisory Committee of Exhibitors it was, however, accepted and agreed to by the Fox Film Corporation.

The additional clauses for the Tom Mix, Buck Jones and specials which were designated as Articles 25 and 26 were, at the suggestion of the Advisory Committee of Exhibitors, withdrawn; and the Fox Film Corporation consented to that.

For short subjects the Advisory Committee of Exhibitors suggested to Fox that the additional clause designated as Article Sixth be amended to read:

"The exhibitor agrees that this application shall be considered as an entirety and shall be accepted or rejected as a whole; and that the O. Henry Comedies, Helen and Warren Comedies, Van Bibber Comedies and Fox Animal series shall, for the purpose of play dates only, be regarded collectively as one unit; and the exhibitor agrees to start actual playing of said unit not later than (a blank space for the date) to be played at the rate of not less than (blank) photoplays per (blank). The entire unit to be played and paid for not later than (blank) days."

This additional clause was agreed to by the Advisory Committee of Exhibitors upon a statement made by Fox that there were producers interested in addition to Fox in the production of these pictures; and for that reason while they were sold collectively they should be regarded for the purpose of play dates collectively, and they should be accepted or rejected as a whole. They were to be played as a unit of productions at a certain rate per week, all to be [fol. 315] played within a certain time.

By the Court:

Q. What does that mean. If a man got two sets he would have to have a schedule for each one?

A. If there were two independent producers, each producing a different class of pictures, released through the same organization, that organization would not segregate those. If they were comedies or short subjects they would contract for them on one form of contract.

Similar to the Educational. Exactly similar to the Educational situation; but as to Educational, they provided in their contract, and explained to the Advisory Committee of Exhibitors that when a contract was received they, in the office, would make up from that contract separate contracts for the productions of each of their producers, so that they could deliver these contracts—which I believe they had to do under their contractual obligations with their pro-

ducers—in other words, that they could show what the rentals were for their particular productions.

This did not go quite so far as that. Then Fox had an additional clause No. 25, which at the suggestion of the Advisory Committee of Exhibitors was withdrawn.

Then for Fox's news reel contract the additional clause that they had which was numbered Article 6 was agreed to by the Advisory Committee of Exhibitors.

[fol. 316] The additional clauses designated as Articles 24 and 25 were withdrawn by the Fox Film Corporation at the suggestion of the Advisory Committee of Exhibitors.

Then came the United Artists' contract. They had an additional form. They had two forms. They had a standard form for flat rental contracts, which means a rental for a specific sum, $100 a week, or a day or $5,000 a week; and they had a form for sharing contracts. Contracts, the rental of which was based on a percentage of the gross receipts, either a guaranteed amount, and a percentage of the gross receipts over a stated sum, or a straight percentage agreement based upon an agreed percentage of the total gross receipts. They distributed very few pictures. The United Artists distributed very few pictures; and most of their pictures were sort of outstanding pictures of Fairbanks and Pickford and Chaplin, and stars like that. There was a large demand for those pictures; and therefore they felt that as a business policy to rent on a percentage basis was to their advantage; so that both of these forms were identical except that one was drawn to provide for a flat rental, and the other on a sharing basis.

As to the flat rental contract, at the suggestion of the Advisory Committee of Exhibitors, the clause in the schedule with relation to the loss claimed for accidents to employees or patrons of the exhibitor was agreed to be with-

[fol. 317] drawn. The United Artists had put in a clause that they were not to be responsible for any accidents or injuries to employees or patrons of the exhibitor. The exhibitors very promptly said that it was not a clause that had a proper place in the contract; but I remember counsel for the United Artists saying that the reason they put that clause in was that a suit had been brought against United Artists as a result of an accident in a theatre in

which there was a United Artists picture being exhibited at the time.

And I think we all pointed out to them that, one suit having been brought under those circumstances, would not justify them to add that provision to all the thousands of contracts they entered into, so they withdrew the clause.

Then the additional clause, designated as 23d, was agreed to, and adopted by the Advisory Committee, upon the agreement of the representatives of all the distributors that the Rules and Regulations Relating to Arbitration be amended to provide for a one-year statute of limitations to apply to all controversies arising under any exhibition contract between a distributor and an exhibitor.

Up to that time there was no limitation of time in the Rules of Arbitration in which claims should be presented to the Board of Arbitration and there were many complaints made by Exhibitors, that the distributors were permitting their contracts to get stale.

[fol. 318] In answer to questions by Mr. Grosvenor:

Distributors were permitting their contracts to become stale, and after two or three years, after the exhibitor had forgotten about the existence of the contract, they would present a claim for a breach of contract. So the exhibitors, in there meeting with the Advisory Committee said or suggested, that the Rules be amended, and all of the distributors being represented at that meeting, agreed to that change. That was a change to be made in the Rules of Arbitration. They said that the additional clause, 23d, used in the United Artists—it was agreed by the Advisory Committee, providing the representatives of the distributors would agree that the Rules of Arbitration would be amended to provide for a one-year statute of limitations. All of the distributors agreed to that.

Now, in the sharing contract of United Artists, the additional clauses specified in the schedule were agreed to by the Advisory Committee, with the suggestion that they be printed in red, which suggestion was accepted by United Artists.

As clauses designated as 23d and 24th are identical with the additional clauses in the flat rental contract, also designated as clauses 23d and 24th respectively, the same

disposition of these clauses in the Sharing Contract was made as that with respect to these clauses in the Flat Rental Contract.

Then the Film Booking Offices of American and regional [fol. 319] distributors. At this meeting, there were representatives of the regional distributors, as distinguished from national distributors. The national distributors are those distributors that maintain generally offices throughout the United States—in all those strategic points and trade centers. Some have 43 and 44 offices; some have as few as 20 or 25, but in the trade, any distributor having more than eight separate offices, is recognized as a national distributor, and those having eight or less are termed regional distributors, or before that term came into use, they were know- as State Rights distributors. They acquired from a producer a picture for distribution in limited territory. At this meeting, these regional distributors, and I think today in the membership of the Film Boards of Trade, there are 77 of them, and I think that pretty nearly represents 90 per cent of the regional distributors. There are probably very few more who are regional distributors, who are not members of the Film Board of Trade. They were represented at this meeting. They had adopted the Standard Contract, and they had used the Uniform Contract, and some of them had added additional clauses.

I will explain the difference between the Uniform Contract and the Standard Contract. The first contract that was adopted, as the result of the first meeting, that I described yesterday—that was called the Uniform Contract.

That is the 1923 contract, everything after that was called [fol. 320] the Standard Exhibition Contract; there are only two.

There is the one of March 1, 1926, the one I am talking of now, and the one that was agreed upon at a later date, known as the contract of May 1, 1928. Now, the additional clauses in the film booking offices—I have finished about the regional distributors.

In answer to questions by the Court:

The regional distributors were not all there but they were represented. There were three or four representing them all and I think they had counsel.

The additional clause in the film booking office Standard Form of Contract designated as 23d and this same clause in the Standard Form of Contracts used by all regional distributors, providing for the exhibition by the exhibitor and the delivery by the distributor of the pictures contracted for within a period of sixteen months instead of twelve months, as provided in the Standard Exhibition Contract, was agreed to by the Advisory Committee upon the statements and representations made by Film Booking Offices and the representative of the regional distributors association that the conditions peculiar to those distributors required the additional four months' period of time for the purposes aforesaid; and the Advisory Committee approved the clause, the distributors agreeing that this additional clause would be imprinted in the schedule in red.

It was agreed in the Standard Exhibition Contract of 1926 that pictures contracted for are to be exhibited within a period of one year, and there is the counter-obligation on the part of the distributor to deliver them within a year. The regional distributors and F. B. O.—Film Booking Offices—felt, because they were not producers and were dependent upon the product for distribution, of independent [fol. 321] producers, and had no control over those producers, they were not in the producing business, so they felt they should have four months' additional time because of the fact that they could not rely upon the producers of the pictures to deliver them within the period of time they had to deliver them under the contract, and the Advisory Committee of Exhibitors recognized the justice of their claim and agreed at that time, so far as the other contracts were concerned, they should be extended to sixteen months instead of twelve.

Then came a decision of what is known in the trade as the Road Show Clause. Shortly prior to that time, there developed in the business, the exhibition of pictures at Broadway theatres in New York. It started originally as an exploitation idea, but finally developed into part of the business. An outstanding picture, selected by a distributor, after he sees the production completed and determines that it is an outstanding picture, arranges for a Broadway showing. These pictures having been contracted for in advance, many of the contracts—many of the exhibitors

throughout the country, thousands of them had contracted for this picture, but the distributor took the position, that by road-showing it, that is, by putting it in a Broadway theatre in New York, and thereby getting the exploitation and advertising value of the picture, thus enhancing its value by the New York showing, as well as by a showing in the principal cities of the country like Chicago, Phila- [fol. 322] delphia, Boston, St. Louis and Los Angeles and some of the other cities, that likewise helped the picture, so that it would have additional box office value, and therefore the exhibitor should be content to await the showing of that picture until the road-showing was completed, because the price of the road-show picture is two dollars in New York; outside of New York it is one dollar, so that he would have the advantage of having a picture exhibited which had charged a high price, and he would have the advantage of showing it at a nominal price at his theatre.

There was much discussion about the provision of the Road Show Clause, finally at the suggestion of the Advisory Committee the distributors agreed in case they desired to provide for the road showing of any picture contracted for, they would adopt a standard road showing clause to be imprinted in the schedule in red, such clause to provide for the right of the distributor to road-show not to exceed four of any of the pictures contracted for, with the right to the exhibitor within thirty days after the mailing of notice by a distributor of an intention to road-show a picture to cancel such picture by mailing notice to the Home Office of the distributor to such effect.

The exhibitor said, in effect, we will agree to your road [fol. 323] show, but if we contract for thirty or forty pictures, we do not want you to fulfill half of your contract; we want to depend on a steady flow of product. If you care to limit your selections to four, we are perfectly willing that you should have that right, with the right to the exhibitor within 30 days after the mailing of notice by a distributor of an intention to road-show a picture, to cancel such picture by mailing notice to the Home Office of the distributor to such effect.

The following distributors agreed to substitute for the additional clauses providing for road-showings in their

Standard Form of Contract, the above standard Road Show Clause:

Metro-Goldwyn.
Universal Pictures.
Famous-Players-Lasky Corporation.
Warner Brothers.

Warner Brothers reserved the right when contracting for one picture (in addition to its announced season's output) on one form of contract to add a clause printed in red in the schedule to provide for the right to Warner to pre-release or road-show such picture prior to its exhibition of such picture by the exhibitor, and for the exhibition of such picture by the exhibitor after such road-showing or pre-release without right to the exhibitor to cancel and without obligation upon Warner Brothers to prerelease or road-show such picture.

Warner Brothers were then contracting, they were at that time releasing only about eighteen—I am not certain whether eighteen or twenty-six pictures, and they were [fol. 324] contracting for two or three of their pictures singly, not in a group, and they took the position, so far as they were concerned, they wanted the right, if they contracted, as they generally did, with exhibitors for one picture on a contract, they wanted the right to road-show that picture and they did not want to give the exhibitor the right to cancel it, because if you cancel that picture you cancel that contract, because there are no other pictures on the contract. Still they said, "We agree, in principle to the idea that you suggest that if a number of pictures are contracted for, you should have the right to cancel a picture that is selected for road-showing, but where we only contract for one, we want to reserve the right to hold the exhibitor to the right to show that picture."

Then the Famous Players contract. The Advisory Committee of Exhibitors agreed to the following additional clauses printed in red in the schedule of Famous Players Standard Exhibition Contract:

"1. With respect to Douglas MacLean photoplays and Harold Lloyd photoplays, the distributor's right to approve or reject the application and or any other applica-

tion signed by the exhibitor whether executed concurrently with the application or otherwise is not to be dependent upon the approval or rejection by the distributor of any other application and or the application."

That clause was put in by Famous Players, because Douglas MacLean photoplays and Harold Lloyd photoplays were produced by independent producers, not controlled [fol. 325] by Famous Players, but released by Famous Players, and they had reserved to themselves the right of approving contracts with exhibitors because Famous Players took contracts for sixty pictures in a series, which were divided up in groups of ten, twenty or thirty, but for Douglas MacLean and Harold Lloyd, they would have a separate form and Famous Players therefore had to reserve the right to a rejection of those, without affecting the acceptance of the others, because of the producer's control of the booking contracts with the exhibitors.

Then a clause providing for the purchase of ad sales material.

In answer to questions by the Court:

Today most of these distributors do not deal with independent producers for their product. At that time however there were a number of independent producers, but I think today there are very few of the independent producers. For example F. B. O. (Film Booking Offices) at that time had no production department at all. Today I think they are producing all of their pictures. It was a single organization; that was the title of it, Film Booking Offices of America.

It was not composed of various offices, it was originally the Robinson-Cole Company, and the corporate name was changed to Film Booking Offices of America and they had [fol. 326] no producing unit at all. They distributed for independent producers. Since 1926, it has developed that practically all the distributors, with few exceptions, are producing their own pictures. They control the pictures either wholly or in part.

Educational I do not believe do any producing with the possible exception of one or two units. They may have, I cannot say this of my own knowledge, but it is my belief that of the eight or ten units of production that they have

for distribution, I believe they control by stock ownership or substantial interest in the production, possibly one or two of those.

Now, this clause providing for the purchase of ad sales material was imprinted in Famous Players' contract. That was agreed to by the Committee and all distributors, practically all, I think, imprint in the schedule that I described before, a provision which provides for the purchase by the exhibitor of a certain amount of lithographs, photographs, to put in the lobby, what they call heralds, advertising material, to announce the picture, which is already prepared by the distributor for the exhibitor when he contracts for the picture, who agrees to buy a certain amount of the material, which cannot be purchased anywhere else. It is made for the picture—I will qualify the statement that it cannot [fol. 327] be purchased anywhere else, there has sprung up in the industry, what is called "Poster Exchanges." They are independent of the distributor. They go around and secure from the exhibitors, their advertising material, ad sales material and they clean it up and rent it out to other exhibitors. That has been the cause of a lot of complaint on the part of distributors,—(as well as the material that they specially manufacture for the picture.) The material is of no use for anything except the picture for which it is manufactured. So, I suppose, to meet the competition of those Poster Exchanges, they imprint on these schedules a provision for exhibitors to buy a certain amount of ad material.

Many exhibitors agree to that, and many do not. They refuse to buy.

Then the Famous Players had in their contract a clause providing for liquidated damages in case of the exhibitor's failure to exhibit any photoplay contracted for on a sharing plan basis.

That the Advisory Committee agreed to, and the provisions printed in the schedule with respect to Harold Lloyd releases. The Advisory Committee was appointed at the meeting at the Union League Club, at which the Standard Exhibition Contract was agreed to. Part of the plan was the appointment of an Advisory Committee consisting of Mr. [fol. 328] Steffes who was president of the Northwest Ex-

hibitors, Mr. O'Reilly, who was president of the Theatre Owners Chamber of Commerce of New York, Mr. E. V. Richards, an independent exhibitor, not affiliated with any producer at the time, operating a large chain of theatres in New Orleans, Mr. Hays, and one other exhibitor, Mr. Woodhull, who was president of the Motion Picture Theatre Owners of America.

There were three representatives of exhibitor organizations; there was one independent exhibitor and Mr. Hays who were on the Advisory Committee.

The distributors were not represented on that committee at all. They dealt with the committee. There was also a provision,—part of the plan was that if the Advisory Committee could not agree, then their disagreement should be submitted to two arbitrators, Henry W. Taft and Judge Grossman.

In answer to questions by Mr. Grosvenor:

The exhibitors that attended that February 6, 1926 meeting are enumerated in answer page 54, and their positions, as testified to yesterday. Metro-Goldwyn contract was then taken up.

Metro-Goldwyn agreed to withdraw the additional clause designated as C with respect to road shows and substitute in place thereof the Standard Road Show Clause suggested by the Advisory Committee.

Metro agreed to withdraw the additional clause D with respect to its special pictures.

It had some other clause by which it had the right to [fol. 329] withdraw some pictures, as specials. Then it had two additional clauses which were designated as A and B, which were agreed to by the Advisory Committee.

Then Universal's contract. Universal agreed to withdraw its additional clause designated as 23d and substitute in place thereof the Standard Road Show Clause recommended by the Advisory Committee.

Then the Advisory Committee recommended an addition to the Rules and Regulations Relating to Arbitration, and, if necessary, to the Standard Exhibition Contract, to provide for special meetings of the Arbitration Boards to hear

and determine controversies arising out of an anticipatory breach of contract. This recommendation was accepted and agreed to by the distributors.

Then United Artists withdrew from both its Sharing and Flat Rental Contracts, the additional clauses therein, each designated as 24th, providing for payments fourteen days in advance of delivery.

The contract provided that payment should be made three days in advance of delivery.

United Artists put in an additional clause which is a very typical example of these additional clauses; this was in direct contradiction of this clause and provided that payment should be made fourteen days. That was the basis of a complaint by exhibitors, that this additional clause [fol. 330] changed or modified a clause that had been agreed upon after months of negotiation and innumerable conferences, day and night, so they very justly complained that these additional clauses just upset all the work that had been done, so they asked for this meeting and the meeting was held, and the clauses were there withdrawn by the distributors or agreed to by the Advisory Committee, for business reasons peculiar to the business policy of the distributors that were using the clauses.

The Advisory Committee then signed the agreement, a little form of agreement was drawn up, which they signed.

This meeting lasted two days. Opinion had been crystallized as to all of these matters before that. There had been letters, telegrams and meetings with regard to the demands that these clauses come out. It was the spring of the year and new contracts were coming into effect, as the representatives of the exhibitor organizations in the territory would see these clauses they would telegraph to Mr. Hays and say, "This is an outrage," pertaining to the contract, and insisting that we must have a meeting, and finally it was crystallized in the meeting of May. All the distributors were there, regional distributors were there, five members of the Advisory Committee; they took these clauses one by one and in two days, they settled the whole question.

Then I think, along in September of the same year, I am [fol. 331] not quite certain of the date, there was another meeting of the Advisory Committee.

The distributors changed their contract; they sacrificed thousands of dollars in printed forms; had new forms printed, and there was no deviation from the agreements. The distributors met at that meeting of the Advisory Committee, and so we had the Standard Exhibition Contract that had been agreed upon, with changes that were agreed to by the Advisory Committee.

In September of that year, there developed another clause—that one or two of the companies were using one Standard Order Clause—I think being used by Pathé principally, and I think by Educational, to the effect—it was used principally with news reels—that if within thirty days preceding the expiration of the year in which the exhibitor agreed to accept and the distributor agreed to deliver, the exhibitor did not notify the distributor that he did not want to continue with the contract, it should be continued and renewed for a year.

The exhibitor members of the Advisory Committee and many other exhibitors complained that that was putting a burden on them, to watch the termination of the contract, as they had so many contracts, and had so much to do, that it was easier for a distributor to watch and to notify them when their contract was about to expire, and then decide [fol. 332] whether they wanted to renew it or not; if they wanted to renew it, it would run along and if they did not want to renew it, they could write to the distributor and say, "We don't want to renew it."

Those contracts could be renewed on that, because there was no selection of pictures made. They were only using it for pictures like news reels, which run evenly from year to year. There were no selections. They bought a series of 52 comedies, for instance, known as X comedies, which were well known in the business, and this man goes and make these comedies—makes them year in and year out; you have probably seen on the screen, Aesop's Fables Cartoons, they were made for years—year in and year out, one or two a week.

While the Advisory Committee of Exhibitors met with the distributors to discuss this standing order clause, at the suggestion of the Advisory Committee, there was a provision or clause redrawn, which provided that there should

be a Standing Order Clause, that could be used at the option of any distributor, providing that 45 days before the expiration of the year, notice of the date of expiration be given to the exhibitor so that he would have at least 15 days to make up his mind whether he wanted to renew the contract, or advise the distributor that he did not want it renewed. That settled that question.

And once more we were cleared away, and nothing de- [fol. 333] veloped with respect to the contract until the meeting of the Federal Trade Conference for the Motion Picture Industry, that was held in October.

By Mr. Grosvenor:

Q. Mr. Hess, before I take that up—there had been, prior to the meeting of this Advisory Committee—there had been many conferences with regard to the work that you testified about—there had been many conferences by the other committee relative to the Standard Contract put in effect on March, 1926, had there not?

A. Oh, yes, there were hundreds of conferences.

Q. So the work of the Advisory Committee that you testified about, which was done in two days, was merely the final work?

A. Yes, just as to additional clauses. The Advisory Committee was appointed at the meeting where representatives of all the exhibitor organizations attended.

I have not any memorandum with me pointing out the differences between the Standard Contract, Exhibit B, attached to the petition, adopted about March, 1926, before the meetings of this Advisory Committee, and the Uniform Contract which is Exhibit A of the petition, but I could prepare a memorandum.

The Court: That can be done in the briefs.

The Witness: We had conferences for days and months on similar matters as I testified, with regard to the Advisory Committee.

There is a third rule about arbitration here. There are four different sets of rules. The first one is in connection with the Uniform Contract; the second one with the first Standard Contract; Exhibit B, now there was a third one

[fol. 334] Exhibit F of the petition, the Rules adopted 1925. Certain changes were made in the rules of 1926 at the suggestion of the Department of Justice. In Rule 4 there was added, at the suggestion of the Department of Justice, a sentence in the third paragraph. Page 132 of the petition it is the second sentence, beginning with the words:

"Said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid."

That was added at the suggestion of the Department. The clause "and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid," that had been in the previous Rules.

The suggestion of the Department of Justice was that there should be a basis upon which the distributor should have known the amount of security and they suggested as a basis the value of the print. That is the physical thing that is sent to the exhibitor, plus the rental price, that the exhibitor agreed to pay for that print. In the same paragraph there is another addition, the last sentence was added.

"Upon the happening of either of such events, service under such contract shall be promptly resumed by such member or distributor." Page 133 of the petition.

[fol. 335] By the Court:

Q. What do you mean, when you say that these changes were suggested by the Department of Justice? When?

A. The Department of Justice started investigation of the operation of the Film Boards of Trade.

By Mr. Grosvenor:

Q. Please state when that was.

A. March 1925.

Q. Year and a half prior to this change in the Rules?

A. Yes. As a result of that investigation, there were several conferences with the Department of Justice, or the

men that were assigned to the case. As a result of those conferences, the Department suggested these changes. During that investigation which went on for about eighteen months, finally concluded in August of 1926, memoranda and briefs were prepared, briefing the questions of law that the Department of Justice had raised and finally, in August, the Department, after making these suggestions, or suggesting these changes, we were advised, for the time being, that no action would be taken with respect to the operations of the Film Boards of Trade.

We were having conferences with the Department of Justice in regard to those Rules, and whether they should be changed.

Q. Look at this correspondence (documents handed to the witness).

A. This is a letter to you, Mr. Grosvenor.

Q. How was the correspondence conducted? You attended the conferences, did you not?

A. I attended the conferences with you.

Q. You met Government's counsel about these matters.

A. Yes, I met Government's counsel about these matters. [fol. 336] Q. Were the Rules changed at this meeting with Government counsel?

A. Yes.

Q. Then were they sent down to the Department of Justice?

A. Yes, by you. This is correspondence with you.

Mr. Grosvenor: I offer that in evidence, you have no objections to that, have you?

Mr. Thompson: Yes, I object to it, your Honor. If this had anything to do with the issues in this case, I would have no objection to it going in.

Mr. Grosvenor: Your Honor, in the Steel case, it was considered of vital importance at the time the Tennessee Coal & Iron Company was taken over, and because Government officials approved the action in advance, it was important on the question of intent. The Department of Justice filed a petition charging us with conspiracy and one of the means which they charge, one of the means of conspiracy is pointing out certain rules and regulations. Is it not evidentiary to show these rules and regulations

were approved by the Department of Justice, and, in fact, were changed by the Department of Justice before they were adopted?

The Court: It would depend on the theory of the Government's case, which I do not exactly understand.

Mr. Thompson: This appears to be immaterial, your Honor; it simply raises a collateral matter. These statements that the Department of Justice approved of this are [fol. 337] not admitted by the Department and if all that is going in, the Department will be impelled to put evidence in to the contrary.

By the Court: Do you dispute Mr. Donovan's signature?

Mr. Thompson: No, your Honor. I do not dispute that, but we will have to put in evidence to show that that is contrary to the Department's opinion.

The Court: May I ask whether the government in this case relies upon the inherent character of the arrangements made irrespective of any intent which the defendants may have entertained? That is, is it the government's contention that regardless of the intent with which these things were done, that if they were done solely for the purpose of dealing constructively and fairly with business problems, they would still be in violation of the Sherman Anti-Trust Act? Or is it their contention that because of the intent with which the things were done they were monopolistic or unlawfully in restraint of trade? On one branch or one theory you may be proceeding and may take your objection to the offer of the proof on solid grounds, but, if on the other hand, you attach any significance or importance whatsoever to the intent with which these things were done I see no basis for your objection.

Mr. Thompson: It is our position in such a case as this, your Honor, that the intent to violate the law is not material and is not charged here.

The Court: No man needs to be shown as saying: "I [fol. 338] am going out to violate the Sherman Anti-Trust Act."

Mr. Thompson: I do not see the materiality or the material bearing of this exhibit unless it was to show lack of that intent, to show no deliberate intent.

The Court: Whether any such arrangements as were here made can lawfully be made regardless of the intent

with which they are entered into, then your objection is well taken, but I do not know whether that is your position or not.

Mr. Thompson. As a matter of fact, your Honor, probably the government pursues both positions.

The Court: Then I will overrule the objection.

Mr. Grosvenor: The first letter is the letter from William J. Donovan, assistant to the Attorney General.

The Court: I do not know about the copies. Do you object to the copies as distinguished from the others?

Mr. Thompson: No, your Honor. It is merely on the question of whether they are pertinent to the case.

Mr. Grosvenor (continuing): To Edwin P. Grosvenor, July 20, 1926.

The reply of Edwin P. Grosvenor to William J. Donovan June 30th, 1926; and the reply of William J. Donovan to Edwin P. Grosvenor July 21, 1926, to which is attached the Rules and Regulations relating to arbitration, Rule No. 4.

(Marked Defendants' Exhibits U. V and W.)

[fol. 339] As to that correspondence which has been introduced, I as General Attorney and Mr. Pettijohn as General Counsel for the Film Boards of Trade sent out instructions to the secretaries with the amended Rule. These papers are the instructions and the amended Rule. These are the letters that were sent out to all the Film Boards of Trade. These papers referred to the Department of Justice investigation and the changes.

(Papers headed "Film Boards of Trade" dated August 26th, 1926 entitled to each Film Board of Trade, offered in evidence and marked Defendant's Exhibit X.)

Q. Mr. Hess, during these conferences in 1925 up to February 6th, with this Committee on Exhibitors and thereafter, those conferences with the Advisory Committee, had objections been made by either of those Committees of Exhibitors to the Arbitration Plan contained in the contract?

A. No.

Q. And in the words "Arbitration Plan," I include the Rules of Arbitration made a part of the contract.

A. There were suggestions for changes in the Rules made, but there was no objection to the general plan at any time.

Q. And by changes what do you mean?

A. I mean the changes I have mentioned.

Q. You referred to the changes, did you not? You refer to the changes you have testified to?

A. Yes. I will proceed and state the next step. In the summer of 1927 relative to a conference with the Federal Trade Commission, Mr. Flannery, in charge of the [fol. 340] Trade Practice Conferences of the Federal Trade Commission, called upon us in New York to ascertain whether we, as representatives of the distributors, would be willing to participate in a Trade Practice Conference; stating that the Federal Trade Commisson felt that such a Conference would be of benefit to the defendants; and that they intended to get an expression of opinion from the representatives of the exhibitors' organizations and many exhibitors as to their willingness to join in a Trade Practice Conference.

We advised Mr. Flannery that we would be delighted to attend such a conference.

In answer to questions by the Court:

By "we" I mean the producers and distributors. The organization representing the producers and distributors; and that we would have at the Conference representatives of all the distributors and all the producers.

In answer to questions by Mr. Grosvenor:

A short time thereafter Mr. Flannery returned and said that he had conferred with the exhibitor leaders, representatives of the exhibitor organizations, and they had also expressed their willingness to attend. He asked by what means this whole idea to hold a Trade Practice Conference could be conveyed to the exhibitors in the United States. I then told him, and described to him our Film Boards of Trade, where they were located, and how they operated; and that we would, for the Commission, send out the Com- [fol. 341] mission's envelopes to our Film Boards of Trade for each of the thirty-two centers throughout the United States, and have them from their very latest records of

theatre ownership address the envelopes and return them to the Commission; and the Commission could then send out a letter to all the exhibitors of the United States. That was done, and the envelopes were sent to New York and we in turn distributed them throughout the United States. That is, to the 25,000 theatres. I think there were between 20,000 and 25,000 at that time. These envelopes were addressed by the secretaries and returned to the Commission, and the Commission sent out a letter announcing the Trade Practice Conference, fixing a time, and suggesting the appointment of delegates to represent the exhibitors, what were then called the non-affiliated exhibitors. That is, exhibitors who were not affiliated in any way with a producer or a distributor or a chain-operated theatre that was owned or controlled or in which a producer or distributor had an interest. There are a number of large chain theatres that are independently owned in which the distributor and producer have no interest.

The plan that the Commission set up was that there should be two delegates from the exhibitors in each of the thirty-two Film Boards of Trade centers, one representing the ownership of theatres less than five; and one representing all theatres of five or more; so that they took in all [fol. 342] classes of unaffiliated exhibitors. These delegates were elected, or selected in all localities by the local exhibitors' organizations; each selected two delegates. In some places where there were no regular organized exhibitors, the members of the Arbitration Boards, the exhibitors' representatives on the Arbitration Boards in conference with exhibitors in the territory which had not been organized, selected the delegates of the classes suggested by the Commission.

In October of 1927 the Conference took place, at the Bar Association in the City of New York. We had the large lecture room of the Bar Association up on 44th Street. There were minutes taken. All the delegates—there were sixty-four delegates—they were selected in accordance with the plan of the Commission; and in addition there were many, many more unaffiliated exhibitors, many who live here in New York and in the close vicinity; and some of the delegates brought with them exhibitors from their territory.

Then there were represented a large number of affiliated exhibitors, exhibitors whose theatres were affiliated, either with the producers or distributors, or in which a producer or distributor had an interest. The producers from the Coast, and those who were located here, were, many of them, independent producers; and the regional distributors and their representatives, the distributors' representatives. I should say the producers and distributors and regional [fol. 343] distributors were all represented by their chief executive officers, either a vice president of the organization or their general sales manager.

This Conference started and lasted for a week. The conference was presided over by Commissioner Myers of the Federal Trade Commission, and they had hearings daily.

In answer to questions by Mr. Grosvenor:

They broke up into sections and the exhibitors made recommendations. The exhibitors' section made recommendations, and the same thing was done by the distributors. The recommendations came in the form of a number of resolutions. I think there were thirty-five or thirty-six resolutions offered by distributors and exhibitors.

The main question, the question at least that took the most time was the block booking question. That was really the question that the Federal Trade Commission were very anxious to have solved if that could be done by the industry, because of an order that they had made in a proceeding that had lasted for six or eight years against Famous Players Corporation, charging them with violation of the law in that they block booked pictures.

By block booking we in the trade recognize by the use of that term the sale of pictures by groups or wholesale selling. Day after day was given to conferences trying to solve this block booking question.

[fol. 344] Some sub-committees of the distributors, and representatives of the chain theatres, these affiliated theatres of independent affiliated exhibitors and the distributors who were primarily interested in that because the producers were not, met, and they finally agreed—the agreement did not take the form of a resolution as the other agreements that were arrived at, but it took the form of a

declaration of policy by the distributors to the effect that in respect to block booking they declared certain things. Then there were other resolutions that were agreed upon and adopted; and so far as those relate to the contract there was a resolution introduced by, I think, the exhibitors.

The pamphlet you show me entitled, "Federal Trade Commission, Trade Practice Conference of the Motion Picture Industry," refers to those meetings.

The matter of a Standard Contract was taken up at these conferences. There was a resolution submitted by the exhibitors and considered by the distributors. The first page of this pamphlet under the heading "Group 1, Rule 1, formerly Exhibitors Resolution No. 6," is the resolution which was prepared. It was considered by the distributors. It was put to the Conference and was carried, unanimously with the exception of one dissenting vote.

[fol. 345] Mr. Grosvenor: I will offer that in evidence.

The Court: The resolutions?

Mr. Grosvenor: The resolution, your Honor. It is printed as Exhibit 4. It is attached to the answer as Exhibit No. 4.

The Court: Is there my objection?

Mr. Thompson: No objection for the purpose for which it is offered, your Honor.

The Witness: This resolution refers to the appointment of a committee of six. The committee representing the distributors was appointed; and the committee representing the affiliated exhibitors was appointed; but the committee representing the unaffiliated exhibitors was elected. They held a caucus in the main room for a considerable period of time, and they elected three members of the committee and alternates.

The members of the committee were: For the affiliated exhibitors, Mr. E. A. Schiller, who was Vice-President of Loews, Inc.; Mr. Harold Franklin, who was President of the West Coast Theatres; Mr. Fred Desberg, who was president of Loews Theatres' interests in Cleveland; Mr. E. V. Richards, who was the head of the Sanger Circuit of theatres in New Orleans; Mr. Dan Michaelove, who represented the affiliated theatres which were being operated by Universal Pictures; Mr. Harry M. Crandall, one of the chief

executors of the Stanley chain of theatres, for the unaffiliated exhibitors Mr. R. R. Beichele, who was president of [fol. 346] the Motion Picture Theatre Owners of Kansas and Missouri. Mr. Bernstein, who was president of the Motion Picture Owners of Los Angeles. Mr. Nathan Yamins from Fall River, Massachusetts.

The alternates were Mr. J. L. Rome, who was president of the Motion Picture Theatre Owners of Maryland. Mr. H. A. Cole, who was president of the Motion Picture Theatre Owners of Texas. Mrs. Joseph Walsh, who was either president or ex-president of the Motion Picture Theatre Owners of Connecticut at that time.

For the distributors and producers, Mr. Felix Feist, who was the general sales manager of Metro-Goldwyn. Mr. J. R. Grainger, who was the general sales manager for the Fox Film Corporation. Mr. Phil Reisman, who was the general sales manager for Pathe.

There were alternates appointed by the distributors. Mr. Sidney Kent who is the general manager of the Paramount Famous Lasky Corporation; and Mr. Joseph Schnitzer, who is now president of what was the F. B. O. Distributing Corporation, and now is the R. K. O. Distributing Corporation; and Mr. Ned Depinet who is the sales manager of the First National Pictures, who were appointed as alternates.

Q. Page 25, et seq., gives the names of the persons who were present at the conference during the week as delegates, and also some civic, educational, religious and other [fol. 347] organizations also had delegates.

Mr. Grosvenor: Has counsel any objection to my putting that in as a list of the people present?

Mr. Thompson: No objection.

Mr. Grosvenor: Then to save time I will offer this statement from pages 25 in fine type through the list of names on page 30, giving a record of those attending the conference.

The Court: The resolution is Exhibit Y. Mark them separ-tely.

(Marked Defendants' Exhibit Z.)

The Witness: I attended meetings of this Contract Committee after it was appointed in respect to the preparation of a contract to be used in the ensuing season. I attended

all the meetings. I kept a record of the meetings, those meetings finally resulted in the Standard Exhibition Contract which is attached to the petition as Exhibit C, and which is the contract now in use. These are the memoranda of the meetings. The Committee met in Chicago on January 31st, February 1st, 2nd, 3rd, 4th, 5th and 6th, and on February 15th, 16th, 17th, 18th, 19th, 20th, and 21st, all in the City of Chicago.

I will take up the contract and point out the matters and state what matters were brought up for discussion and consideration, whether by distributor or exhibitor, and give the history of the contract. When that first meeting was held, at the first day's meeting, there was no record made. [fol. 348] There were the alternates of both sides there. That is, the alternate exhibitor committeemen, and the exhibitors' committee, and the three of the distributors' committeemen of the Distributor Committee, three of the Distributor Committee, and one alternate.

During the first day the discussion were general; and as a result after the first day's conference it was decided that both sides would make proposals in writing, and that proposals would be discussed and then either accepted or rejected.

So that these minutes are the copies of the original proposals that were made either by the exhibitor representatives or the distributor representatives. The exhibitors proposed that the first clause of the contract be stricken out, and that a new clause be substituted; and that all additional clauses not agreed to by the Contract Committee—

Mr. Grosvenor: We began with the exhibit on page 82, of the petition, the exhibit which is marked C, your Honor, which is the contract, which followed from these conferences.

The Court: I was looking for the one they were re-forming.

Mr. Grosvenor: That begins at page 64. That is Exhibit B.

In answer to questions by the Court:

They proposed to strike out the first clause; and that all additional clauses not agreed to by the Contract Commit-

tee be incorporated in a rider to be signed by the exhibitor. That is, additions coming in. That is, additional clauses, [fol. 349] they suggested that if there were going to be any additional clauses they should be printed on a rider, and to be binding upon the exhibitor, the exhibitor should sign this rider in addition to the contract; and that no clause be added to the contract unless first submitted to the Committee; and that added clauses not agreed to by the Committee may be added as a rider to be signed by the exhibitor; but if signed the rider was then to be deemed a part of the contract. The clause they proposed is the now first clause of the contract.

In answer to questions by Mr. Grosvenor:

Page 83 of the petition which is an amplification of the warranty that was stricken out in the contract then under discussion. They were not yet satisfied on that point.

The distributors were still getting some changes on the contract, and it was suggested that the contract not be filed with the Motion Picture Producers and Distributors, but that a printed copy be filed with the American Arbitration Association, which was agreed. That additional clauses on a rider, they suggested, should be of no effect unless the rider was signed by the exhibitor; and that the warranty shall contain a provision that the additional clauses must be approved by the Contract Committee. That if clauses are incorporated in a rider that they should [fol. 350] not be inconsistent with any of the provisions of the contract. That was agreed to by the distributors. The distributors proposed that the second paragraph be incorporated in Article Third, and that the Second Article be amended to read as they proposed.

The exhibitors concurred in the distributors' proposal. Then the exhibitors proposed that a clause be added to that second article to provide that the exhibitor shall have the option at the end of the term of the contract to either accept or decline to accept such photoplays as were not delivered. The distributors did not concur in that, unless the distributor was given a right to either deliver or not deliver its pictures; and that the exhibitor should not have the option to say "We want this or we do not want those" without a similar option being given to the distributor.

That is a similar option given to the distributor to withhold the pictures and not deliver them. The distributors then proposed that if the contract provided for one or more theatres, the right to exhibit the pictures should not be deemed to include the right to exhibit them in more than one theatre; and the exhibitors concurred in that proposal. [fol. 351] The exhibitors then proposed that a clause be added to provide that all applications taken at the same time were to be deemed one transaction. I will explain that. As the business developed and the pictures of distributors received different classifications they were contracted for on separate forms of contracts. They had a contract for one feature. If it was an outstanding picture like "The Big Parade" they would put it on a separate form of contract. If they had a series of pictures in which one star was to be featured they would probably put those on a separate form of contract. While they would announce their season's production, let us say, for fifty-two pictures, the production would be split up into four or five and possibly six different forms of contract.

Split up into four or five separate contracts; not forms of contract. The exhibitors signed four or five different contracts for these different classes of pictures because of a practice that the exhibitors stated to the distributors at this meeting where the distributor would accept two or three of these contracts, and refuse the others, the exhibitor claiming that when he had entered into the negotiations he had arrived at a price or an agreement for all the pictures that he had signed contracts for, and therefore it was unfair on the part of the distributor to pick out those that he wanted to accept and send back the others that were not acceptable [fol. 352] to him; and they, therefore, proposed that all the contracts entered into at the same time should be dealt with as one transaction; and the distributors agreed to that. That is a provision in the new contract. I am at the bottom now of that second page. When that question was discussed it was pointed out to the exhibitors that in the case of the United Artists they only did business,—that its business policy was to contract for one feature at a time; and that each picture was on a separate contract, because of the requirement of the producer of the feature to control its rental and approve its price; that some provision should be

made so that they could do business without being hindered by reason of the fact that they represented in distribution independent producers; so it was proposed that a clause be drawn in the form of a rider, or in the form of a clause that would be approved by the Contract Committee, but which the exhibitor would sign so that his attention was called to it; and that when he signed a series of contracts he agreed that any one or more of the series could be accepted or rejected.

The members of the Committee felt that that was only fair to United Artists, because that was the only company that was doing business in that way; and the exhibitors agreed to that. That rider and that approved clause had [fol. 353] to appear in the schedule, and that space had this provision for the exhibitor to sign it, so that in addition to signing the contract his attention would be called to the fact that if he signed for eight or ten contracts United Artists would have the right to accept or reject any of them or all of them. As to clause No. 3, the exhibitors and the distributors agreed that it should be stricken out, and that the present clause three should be substituted. It is the same provision in the contract that was then under discussion, although put in a different place.

It was proposed by the exhibitors that the clause fourth on page 66 of the petition be changed by adding to the provision the words "unless otherwise agreed in writing." The fourth provision is the provision for payment three days in advance; the exhibitors suggested that that be added so that if a future date was granted it could be provided for by an agreement in writing. It was pointed out to them that that was not necessary to be added to the contract because if such an agreement was entered into in the form of a rider it would modify the contract, so the exhibitors withdrew their proposal as to that.

The fifth clause, the distributors proposed at the end of it—the fifth clause is a clause put in for percentage [fol. 354] booking, which eventually was taken out of the contract, and added at the end as an approved added clause. But the proposal made by the distributors was that at the end of the paragraph there be added a clause to the effect that upon the dates that a picture was being shown under a percentage booking an authorized representative of the

distributor be authorized to verify the sale of tickets and admissions to the theatre and the receipts therefrom, and for such purpose to have access to the theatre. That clause after much discussion was finally approved and appears as clause 4 of the added clauses.

In answer to questions by the court:

That was clause 5 of the original. Much of the discussion on this clause was confined to the objection of the exhibitors to have anybody go into their box office or have access to their records; and particularly on percentage booking to have anybody employed who was a resident of the locality where the theatre was situated. They did not want their business to be known to people living in the town; and therefore, the distributors agreed as is provided in the clause, that any information obtained pursuant to the provisions of the clause will be treated as confidential except in any arbitration procedings. The distributors agreed unless such representative be a regular employee of the distributor, not to employ as such representative any [fol. 355] person who was a resident of or remained employed at the place where the exhibitor's theatre is located except with the consent of the exhibitor. I am reading from clause 4. It starts "the distributor agrees" on the page prior and right down to the bottom. That will be clause 4 of the approved clauses.

In answer to questions by Mr. Grosvenor:

Those were additional clauses which have to be signed by the exhibitor when used and inserted in the contract. That appears on page 105 of the petition, that clause 4. The exhibitors rejected the distributors' proposal for a liquidated damage clause, and withdrew their proposal to strike out the second paragraph upon the agreement of the distributors that the examination of the books would be made by a certified public accountant or in the alternative that the box office statement would be sworn to before a notary public. There was much argument about the expense of employing certified public accountant and going before notary publics to swear to box office statements. Finally, the exhibitors concurred in the distributors' proposal that the representatives of the distributor should not be residents

of the place where the theatre is located, except representatives residing in key cities. The clause finally agreed upon was that; and clause No. 4 was not. The exhibitors then [fol. 356] proposed that clause No. 6 of the contract should be stricken out.

In answer to questions by the Court:

They finally agreed upon the liquidated damage clause, that is clause 5, additional clause 5.

In answer to questions by Mr. Grosvenor:

The additional clauses that were approved could be used without having them signed by the exhibitor, but it was optional for the distributors to use them. They could put one or all of them or any number of them in their contract. Clauses which were not submitted to and approved by the Contract Committee would have to be incorporated on a rider in a rider and signed by the exhibitor; and upon the additional condition that their provisions should not be inconsistent with any of the provisions of the contract.

By the Court:

Q. What does it mean in the first clause:

"It is agreed that any agreement in the schedule covering or describing what photoplays are licensed hereunder——"

What is the schedule?

A. The schedule is that long paper.

Q. Will you give me a form of the contract with the schedule? *Q.* "Any clauses in addition." What does this mean, "in addition to the number?"

A. "In addition thereto appearing upon the schedule."

Q. That does not include the additional clauses?

[fol. 357] A. No, the additional clauses are approved additional clauses. The Standard Contract ends with that line there.

Q. "The distributor warrants that there is contained herein all of the numbered articles of the 'Standard Exhibition Contract' agreed upon by the Contract Committee appointed at the 1927 Motion Picture Trade Practice Con-

ference (an authenticated copy of which has been filed with the American Arbitration Association). The distributor also warrants that any clauses in addition thereto—" those clauses might be 1, 2, 3, 4, and 5 of the additional clauses?

A. Yes.

Q. All the clauses specifically approved by the Contract Committee?

A. Yes.

Q. "The distributor also warrants that any clauses in addition thereto appearing upon the schedule have been approved by such Contract Committee, and that any additional clauses appearing upon a rider, if any hereto annexed, are not inconsistent with any of such numbered articles." I take it, that 1, 2, 3, 4 and 5 are determined not to be inconsistent?

A. Yes.

Recess.

The Witness: I had finished with Article 5th of the Contract.

At the suggestion of the exhibitors, Article 6 was changed to provide that the protection period should run from the [fol. 358] last day of exhibition instead of from the first, the exhibitor claiming that under the old contract if he ran a picture for four days and got ten days' protection his protection really was only six days, and in order to get the full benefit of the protection period, the ten days that had been granted, it should be counted from the last day of the exhibition.

Protection is a right given the exhibitor under a contract by the distributor entitling him to the exclusive right to show his picture without its being shown subsequent to its exhibition for a period of days agreed upon between the distributor and the exhibitor.

In the territory in which the theatre is located, the distributors concurred in that suggestion, and the provision was changed.

Then there was added at the suggestion of the exhibitors to clause 6 the last sentence which in effect provides that if protection is granted against a specified theatre, and the protection itself that is granted should indicate that it is the intention of the distributor to grant such protection

against all such theatres in the immediate neighborhoood, or in the vicinity of the exhibitor's theatre, then unless otherwise provided in the contract, protection should be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

[fol. 359] The exhibitors pointed out that in many cases where an exhibitor had received protection over a number of specified theatres after the contract was signed either a theatre that was then closed was opened, or a new theatre was erected, and they wanted that protection to include theatres that would be reopened or erected, so that they were getting the full benefit of the protection that was granted and for which they contracted at the time the contract was signed.

These matters of protection are very important to the exhibitors. The matter of protection and the matter of run are two very important elements in fixing rentals of pictures.

It is obvious that if an exhibitor has the right to show the picture first in his neighborhood or in his city, he has a right which no other exhibitor has, and that is a very strong element in the amount of rental that the distributor will agree to license his picture for. Also, as to protection, if an exhibitor gets 30 or 10 or 60 days protection in a specified zone or city—often protection is given against all showings of a picture in the same city for a period of 30 or 60 days or longer periods—he has the exclusive right to show the picture. Then for a period of time thereafter the picture cannot be shown by the distributor within the [fol. 360] area specified in the contract, which enables the exhibitor getting that to advertise the fact that this picture will not be shown in his neighborhood for three months or six months or whatever protection is granted, and the time granted is commensurate with the rental that he pays.

As pictures are distributed, there is the first-run, the first exhibition. Then there is the second and the third and fourth and fifth until it finally gets down to the point where for a very inconsequential amount of money the little exhibitor or the exhibitor operating a small theatre, probably in a local neighborhood, gets the picture, after it has been shown in all the other theatres.

So the matter of protection is very important, and it bears on the element of the age of the picture. That also

is an important element in determining the rental—how quickly can an exhibitor get a picture after its first release?

Pictures are generally released in the big trade centers immediately when they are available. That is, when they are produced, and the prints have been made and sent to the exchanges they become available for first exhibition. Those first exhibitions affect the box office value of the picture throughout the whole territory. Each subsequent run [fol. 361] exhibitor is looking forward to the pictures that he has contracted for, and he observes how they are being received in the first run centers, and largely his policy in exploitation and in presenting the picture is dependent upon its reception in the big so-called key centers.

These matters become common knowledge in the industry. The success or failure of a picture or the manner in which it is presented become common knowledge in the industry almost instantaneously.

Of course, these pictures are commented upon. They are reviewed by the trade papers and also by the daily papers.

So it is important for the subsequent run exhibitors to get the picture as soon after the exploitation and the advertising it gets by its first exhibition in the zone or territory in which the exhibitor's theatre is located.

That suggestion was made by the exhibitors and agreed to by the distributors.

Paragraph 7th was a consolidation of articles 8th and 10th with an important addition suggested by the exhibitors, that is, by adding the words with reference to prints "suitable for exhibition."

It was pointed out to the distributors that many of the [fol. 362] claims against distributors that had come before the Boards of Arbitration by exhibitors against distributors were based upon the claim made by the exhibitor that the print of the picture was not suitable for exhibition. It either was what they call a rainy print, streaked——

By "unsuitable" I mean the print was old or worn or had not been properly inspected, or sections of it were improperly spliced so that the projection would not be first-class when projected on the screen.

Many claims against the distributors were presented to the Board of Arbitration on that account, and the exhibitors at this meeting said that the distributor should be

obligated under the contract to ship a print that was suitable for exhibition.

Most of these claims were by the smaller exhibitors, because the prints, when they come to an exchange and go on first runs, are new, and they are in good condition, but as the prints age, and the life of a print is only about sixty showing days, which means, if it is run through a machine five or six times a day, that the print, after fifty or sixty days, is absolutely useless.

In the first place, it is inflammable material, and it is material that has got to be properly handled. Therefore [fol. 363] all these claims were really by the exhibitors who got the fourth, fifth, sixth, eighth or tenth run of the picture, after it had been in circulation, and the exhibitors represented that the small exhibitor was entitled to as good a print or as suitable a print for exhibition, as the bigger exhibitor, in comparison with the amount he paid for film rental, with that which was paid by the big exhibitor, considering the gross receipts that the big exhibitor obtained, and the gross receipts that the little exhibitor obtained, he was entitled to give his patrons as suitable a projection or exhibition of the picture as it was possible. So that suggestion of the exhibitors was agreed to, and that clause was put in.

So the distributor is obligated to deliver a print that is suitable for exhibition. Of course, the question of fact, whether it is suitable or not, would be determined by the Board of Arbitration.

Then the exhibitors, in connection with that clause, pointed out that often prints of pictures that were contracted for, were not delivered in time. That is not a miss out. Miss out is the technical trade name for non-delivery. Delivery not made in time would be a late delivery. In order to prevent a miss out, that is, the non-delivery of pictures, because of the fact that they were delivered late [fol. 364] to the carrier, which would entail a dead loss—result in a dead loss to the exhibitor because he had no picture to show, and he would have to dismiss his patrons and give them back the admission they had paid, the exhibitors suggested this additional clause,

"that all deliveries that were made other than at the distributors' exchange, should be made in time to enable the

carrier, in accordance with the carrier's time schedule to deliver it to the exhibitor or at the place where the exhibitor's theatre is located, at least one hour before the time of the opening of the exhibitor's theatre."

That was primarily based upon the complaint of the smaller exhibitors who are situated, at large, at long distances from the exchange centers. They wanted to have at least the privilege of knowing an hour before their show opened, that their prints were in hand. So the distributors consented to that, and that clause was inserted.

There was another important addition suggested by the exhibitors to article 7th, that was this:

Under the contract, which they were then discussing, it provided that if, for example, a miss-out had occurred and the picture had not been delivered, and it was the fault of another exhibitor in not forwarding it in time, or in a failure to forward it at all, the contract provided that a claim should be awarded against the exhibitor. The exhibitors at this conference contended that there was nothing unfair about that, because it was not the distributor's fault, but [fol. 365] they said that the claim if awarded against the exhibitor, is generally against an irresponsible party, and there is no means for the damaged exhibitor collecting that claim, even though the Board of Arbitration had awarded him damages, and they argued that the distributor should assume that obligation, because the distributor was in a better position to sustain that loss than the exhibitor. So that clause was eliminated, and an addition was made so that that claim should not be asserted against the exhibitor, but provision was made in the rule so that the distributor at the same time could assert a claim against the offending exhibitor and bring him in as a party to the proceeding, and if the award was made in favor of the exhibitor against the distributor, the Board of Arbitration would be obligated to provide an award against the offending exhibitor, and the distributor would have to take a chance whether he collected the damages.

I think I did explain that the reels are sent out, that is, the prints are sent out in containers from the exchanges. They are sent there directly to the exhibitor.

They arrive at the exhibitor's place just before the time of exhibition, at the theatre, and as soon as the exhibition is completed, the exhibitor returns it either to the exchange or forwards it to the next exhibitor. When he does not send it promptly to the next exhibitor, a claim arises against the exhibitor; that is what I referred to.

[fol. 366] In answer to questions by the Court:

The Arbitration Rules were arranged to that effect, but there was added to the clauses itself, to the 7th, I think it is—no, I am mistaken, it was added to the Rules. It is in the provision in the contract under discussion where it was eliminated.

Mr. Grosvenor: At page 87 of the petition the second paragraph.

The Witness: It is article 10th of the 1926 contract, the last sentence on page 71 of the petition:

"In case the exhibitor shall be damaged by reason of the failure or delay of any other exhibitor in returning any positive print to the distributor or in forwarding (as directed by the distributor) any such print to the exhibitor, the exhibitor agrees to assert such claim for damages only against such other exhibitor and that such claim and the damage, if any, shall be determined by the arbitration provided for as aforesaid."

That was omitted, and the Rules were amended to provide the plan that I have just stated, which is found on page 87 of the petition. It provides that:

"The damage, if any, so caused, such other exhibitor, as shall be determined by arbitration as provided for in Article 18th hereof."

By the Court:

Q. That is not new, is it?

A. What paragraph are you looking at?

Q. The seventh paragraph; that is the clause which Mr. Grosvenor just pointed out.

[fol. 367] That was not in the old one, looking at page 70 of the petition the first sentence of that paragraph,

that is what I meant. The provision remained making the exhibitor liable, but the provision is stricken out which requires him to assert his claim against the other exhibitor, which left the distributor in the position under the Rules, that if an award was made against the exhibitor, and the offending exhibitor did not pay, the distributor was liable.

Now, Article 8th of the contract, which was Article 9th of the contract under discussion, was the article which provides for the designation of play dates.

There was no objection made by the exhibitors to this article or by the distributors, but it was claimed that the article that was then in use was confusing, and an attempt was made to clarify it. It is a long, complicated provision, setting out the machinery for fixing play dates, if they are not agreed upon at the time the contract is signed, or not agreed upon outside of the contract.

Before the Uniform Contract of 1923, this machinery for designation of play dates was totally different between the different distributors, and it made much confusion in the assignment of play dates.

By the Court:

Q. Article 9 of the old contract is merely clarified?
A. That is all.

[fol. 368] There is no change in substance except one important change was made, suggested by the exhibitors, and the argument advanced for it is this: That exchanges were in the habit of sending out notices of the availability of pictures which they expected to have in their exchanges, that is, prints of pictures. It was pointed out that many exhibitors received these notices, and were required, months in advance, to arrange for a date for a picture, which was not then in the exchange and they argued that was unfair, because the distributor should not have the right to send out notices of availability of pictures, unless he had the print in hand, and only should send out availability of pictures if the print was received in his exchange. They argued pro and con. Finally the distributors consented that notice of availability can only be sent out if the print of the picture is in the exchange.

Q. Have there been cases were they did not get the pictures? Just what was the reason for that?

A. The exhibitors said they were asked months in advance to fix a date within fifteen days after the receipt of the notice, and they did not know what conditions were going to be a month in advance; they did not know what other pictures they were going to get a month in advance and they argued, when arranging their program, they have certain days of the week on which they show a certain class of pictures and on certain days they show a different class [fol. 369] of pictures. Sometimes, on designated dates, they put in their strongest program that they possibly can, in order to stimulate business. On certain other days, they put in weaker pictures and they did not want to be in a position, simply because they received a notice, to designate play dates—and one or two exchanges were indulging in that practice, when they did not know from other exchanges that they were going to get at the same time certain pictures which they required in order to balance their program for presentation——

In answer to questions by the Court:

That is in Article 8th of the new contract, right at the beginning, in the last sentence of the first paragraph:

"Such notice shall be of no effect unless such print is in the place of the distributor from which the exhibitor is served."

Article 9th of the contract was the same as article 11th, but there were some changes and additions made.

In the contract under discussion there was a provision which required the exhibitor to pay for any damages to a print or because of its loss or destruction or theft, four cents per linear foot, and for colored print, for which the maket price at that time was 18 or 20 cents a foot, they had to pay the laboratory costs. The exhibitors took the [fol. 370] position that the distributors were making a profit of four cents; they were getting the prints at wholesale, and any profit that they made, the exhibitors should have the benefit of, because they should not benefit by a profit from the exhibitor, because of an accident of de-

struction or loss of the print. So at the suggestion of the exhibitors, the fixed price was eliminated from the contract and it was agreed that the laboratory cost of all prints, whether colored or black and white, should be inserted. That becomes very important right at this time, with the use of sound pictures, that have the sound recorded on the prints. Those prints are very much more expensixe than the other prints. The plain, silent prints, were much cheaper, and the exhibitor has the benefit now of getting this at laboratory cost, if he destroys or damages it.

By Mr. Grosvenor:

Q. Are there a good many claims filed for damaged prints?

A. Our records will show exactly how many there were, and the amount involved.

Many of those claims are settled before going to the Arbitration Board or without going to the Arbitration Board; 52 per cent of the claims filed were settled before they ever went to arbitration; I do not suppose there were over 150 claims all over the United States by distributors [fol. 371] that went to the Board of Arbitration on that question, and I suppose the amount involved is from fifteen thousand to twenty thousand dollars.

The records will show exactly how many claims of that character were determined, and what the amount involved was.

In that same paragraph, under paragraph eleventh of the old contract, the exhibitor was liable for any damage to a print from the time it left the exchange until it was returned, and the exhibitor said that it was unfair, that they were perfectly willing to assume the liability, but if the damage occurred while it was in transit and out of the exhibitor's control they felt they should not be made liable for the damage.

The distributors agreed to that. The provision in the contract was added.

Another provision was added at the suggestion of the exhibitors because of the fact that under the contract then under discussion, if a print was lost or stolen and the

exhibitor had paid the damage caused the distributor by reason of the loss or theft, the contract provided that upon the recovery of the print the exhibitor should receive credit for the amount of the damage that he paid. The exhibitors said that they felt they should have the option to say whether they wanted credit or cash, to have the [fol. 372] money that they had paid returned. The distributors agreed to that, and that provision was added.

By the Court:

Q. Where is that?

A. That is in Article Ninth about the third sentence from the beginning. News reels of course if recovered at a later date are of no value at all. They become stale. So the exhibitors agreed at the suggestion of the distributors that the news reels should be excepted.

Q. That is the same as the clause at the bottom of page 71, is it not?

A. The word "repay" is not in. You are now looking at the contract.

Mr. Grosvenor: Page 65 is the other one.

The Witness: Page 65 is the contract we are discussing, March 1st, 1926.

I know there was some discussion on that. I can not reconcile that discrepancy for the moment.

I prepared an analysis after this contract was put into effect, at the request of those who attended the conference. I have one here in front of me. I am still of the opinion that that is wrong. I am referring to an analysis that I made here, and it says that under the provisions of the contract if a print were lost or stolen, and on account [fol. 373] of such loss or theft, the exhibitor had reimbursed the distributor, and thereafter such print was recovered or returned to the distributor, the exhibitor was entitled to receive a credit for the amount he had paid. A provision in the new contract has been added to this article which gives the exhibitor the option to require repayment of the amount so paid, or a credit for such amount.

The Court: The government bill may be in error.

The Witness: That may be wrong in the printing.

Mr. Grosvenor:

Q. Mr. Phillips suggests we look at the bottom of page 71 of the petition, Mr. Hess, and then at the middle of page 90.

The Court: The option is left out.

Mr. Grosvenor: The option is in the new contract.

A. Page 90?

Q. Page 90, Mr. Hess, in the middle of the page.

The Court: That is clear, that the exhibitor was given the option.

A. The distributor had the option before, and now the exhibitor has it under this contract.

Under the old contract, under the first Standard Exhibition Contract, they were discussing Article Eleventh of the new contract. There was the omission of the words "on the day of receipt of such print" the exhibitor need not telegraph the distributor's exchange. They did not need to telegraph that it was received in a damaged or partially destroyed condition.

In answer to Question by the Court: That is by the omission of the words Article Eleventh of the new con- [fol. 374] tract, which were in the old one, "on the day of receipt of such print."

No, it is in the Ninth Article of the new contract. It says the exhibitor shall immediately notify the exchange by telegraph. It says if any positive print shall be received by the distributor from the exhibitor or a subsequent exhibitor in a damaged or partially destroyed condition it shall have been deemed to be so damaged or destroyed by the exhibitor. They struck out the words "on the day of the receipt" and they substituted "prior to the second public exhibition thereof."

The exhibitors contended that often they received a print a day in advance of its showing shipped by the distributor in order to be in the exhibitor's possession in good time for its exhibiton, and that they did not examine it, that the exhibitor did not have the inspection facilities which the distributor had, and they did not examine it

on the day of its receipt. The first time they would ever notice that a print was damaged was after it had been projected.

So at their suggestion those words were stricken out and the distributors agreed that the exhibitors would have an opportunity to examine it when it was projected for the first time, and if they telegraphed or notified the exchanges before the second public exhibition that would [fol. 375] be sufficient notice, and relieve them of the presumption that it had been damaged while it was in their possession.

Article Tenth of the new contract in the pamphlet is a revision with new matter of Article Twelfth of the current contract.

In answer to question by Mr. Grosvenor:

The subject matter of clause 12th of the contract under discussion was taken up at the Trade Practice Conference, and a resolution introduced by the exhibitors was——

In answer to questions by the Court:

When I say the "contract under discussion," I mean under discussion at Chicago.

In answer to questions by Mr. Grosvenor:

The 1926 contract. It was the subject of discussion at the Trade Practice Conference; and that discussion resulted in the adoption of a resolution presented by the exhibitors. That resolution appears on page three of the Trade Practice Conference for the Motion Picture Industry pamphlet issued by the Federal Trade Commission. It is Rule 3.

In answer to questions by the Court:

Much discussion at the conference took place about this clause; and finally the clause as it appears in the 1928 contract was agreed upon by the exhibitors and the distributors. That is the tenth article.

[fol. 376] In answer to questions by Mr. Grosvenor:

Under the article of the 1926 contract the exhibitors [fol. 377] claimed that the distributors had contracted

for certain pictures by a very meagre description at the beginning of a season; that they would arbitrarily substitute stars or directors or a story for the picture they contracted for; and the exhibitors took the position that having contracted for a certain story, or having contracted for a certain star, or having contracted for a certain director's picture, they were entitled to receive that which they had contracted for.

There were a number of matters of that kind. Claims by exhibitors against distributors presented to the Board of Arbitration, and they had passed on them; and there were claims made by distributors against exhibitors who set up as a defense that the pictures they were asked to use were substitutes for those that they had contracted for.

The conferees in Chicago had tried to work out a clause on both sides with some definiteness requiring the distributor, if he contracted for a picture of a story or a director, or based on a well known book or play, in the early part of the year to deliver that which he had contracted for, and to do away with these claim made by the exhibitors that the distributors were substituting pictures. The result was the provision in the 1928 contract.

[fol. 378] In answer to question by the Court:

It was a considerable amplification of the 12th provision of the 1926 contracts. It was much more specific, and limited the distributor.

You can do most anything under No. 12, but under the 1928 contract it is pretty confining, and then in addition to that it was agreed upon as a statement of the Committee, it contains this language:

"The description of the photoplays which shall be identified by specific designation of a star or director, or as based upon specific literary material or described by an identifying description of the story, provided that in long term and/or franchise and/or service contracts providing for more than one year's 'releases', the photoplays may be generally described as photoplays released by the Distributor or a like general description, and in such long term and/or franchise and/or service contracts the provision of the Standard Exhibition Contract may be incorporated therein.

Any 'short subject' photoplay may be identified or described by brand or similar description."

That was because of a claim made by the distributors that they were perfectly willing to sell a year's production to be confined to a description of what they were selling, but when they were entering into two, three, five and sometimes ten-year franchises with the exhibitors, there was no way of specifying the titles of the pictures. All they could agree was to deliver that product released during the period fixed by the contract, so that explanation at the end was added. [fol. 379] Clause 13 of the 1926 contract, as to that clause, the exhibitors suggested that after the word "assignee" in the seventh line of the 13th clause that the balance of the clause be stricken out, and the following clause be substituted:

"And the acceptance on the part of the distributor shall relieve the original signer of the contract from liability."

The distributors did not concur in that suggestion, and stated as their reasons that because of the existing evils in the industry arising out of the transfer of theatres for the purpose of avoiding existing contracts, and for the further reason that it would put the burden upon the distributor, upon an assignment being made, of determining the financial responsibility of the assignee without adequate time to make such examination, because of the almost universal requirement of assignees for a continuation of service of pictures without interruption. Upon that statement, the exhibitors withdrew their suggestion, and the clause remained the same as in the 1926 contract.

After proposals were made by both sides concerning article 14 of the 1926 contract it became the same. It was incorporated in the 1928 contract as article 12th excepting that the words "news reels could be cut or rearranged" were added. The argument, or the reasons stated by the exhibitors for making that proposal was that often they [fol. 380] contract for two or three different news reels; and they wanted to have the privilege of taking the best material from each news reel and rearranging it in accordance with their desires and presenting it, as for example,

the Rialto was the name of the theatre, the current events of the Rialto Theatre and the current events of the Strand Theatre. They did not want to be limited to running the news reels as they were received. The distributors finally agreed to this after, I think, telephoning to the news reels manufacturers and stating what the proposal was. They said that they were perfectly satisfied, and that the big first-run houses in the city were doing it and if any other theatres wanted to do it, they had no objection to it; so that that was agreed to.

There was much discussion about the provisions of article 15th of the 1926 contract.

Adjourned to March 18th, 1929, 10:30 A. M.)

[fol. 381] New York, March 18, 1929—10:30 A. M.

Trial Resumed

Gabriel L. Hess resumed.

Direct examination.

By Mr. Grosvenor (continued):

I was starting to tell of the 15th clause in the 1926 contract.

That clause prompted a long discussion, the exhibitors taking the position that in the past years, the distributors or the producers, principally the producers had received large sums of money for subtly advertising well-known products and using them in their picture, and the exhibitors felt that they did not want to have their screens used for advertising purposes, without receiving compensation for it.

The distributors took the position that they did not use material for advertising purposes in their pictures unless the story or the continuity of the picture required same even if it had been nationally advertised, and denied that they were receiving any compensation for using those articles.

Finally, after quite a long wrangle, the exhibitors suggested that the words, "received by the distributor," be added at the end of the clause, and there was an agreement [fol. 382] to that effect and that clause—the 15th clause of the 1926 contract now appears in the 1928 contract, as clause 13. Clause 15th of the 1926 contract——

In answer to questions by the Court:

The words added were "by the distributor" "received by the distributor," that was the line. Clause 16 of the 1926 contract was not changed, but it was the basis for a long discussion on the part of the exhibitors and I think I can best explain it by reading the written proposal by the exhibitors in that regard:

"The exhibitors propose that there be added"——

In answer to questions by Mr. Grosvenor:

I refer now to the minutes of the February 15 to 21st meeting. It is the last meeting.

"The exhibitors propose that there be added the following to clause 14"——

that was the tax clause.

In answer to questions by the Court:

A. Fourteen of the new contract.

In answer to questions by Mr. Grosvenor:

Same as 16 of the old.

"The parties to this contract agree that the stability, that they propose"——

what I am reading now, should be added to the clause——

The exhibitors proposed.

[fol. 383] "The parties to this contract propose that the stability of the motion picture industry, as well as the economy and efficiency of the distribution and exhibitions of photoplays depend upon uniformity of the contract, and especially upon arbitration of disputes between exhibitors and distributors and even producers, and to the end that

such results may be obtained, there is hereby created a fund for the necessary expenses of the associations of the respective parties hereto; said fund is to be created in the manner following, to wit:

"An amount equal to one per centum of the sum paid under this contract shall be deducted therefrom and paid by the distributor quarterly, one-half of said sum so deducted to the association of the party of the first part, now known as the Motion Pictures Producers and Distributors of America, Inc., and one-half of said sum so deducted to the association of the second part, now known as the Motion Picture Theatre Owners of America; and the association of the second part in accepting said sum, agrees to remit to the respective state organizations of theatre owners two-thirds of the amounts received quarterly to be divided according to the quota as now or thereafter may exist and on which film is sold for that stage. This provision shall continue for a period of five years."

To that proposal the distributors replied:

"The distributors' committee, while fully appreciating the necessity of the proper financing of the cost of arbitration, feels that it cannot, without a careful canvass of the situation, undertake to commit itself at this time to the plan proposed by the exhibitors, which includes the financing of the national exhibitors' organization and the national distributors' organization, and the local state exhibitors' organizations.

"In the short time which we have had to discuss the matter among ourselves, we have worked out a tentative suggestion which we would like to have the exhibitors consider with all possible care. The suggestion embodies the follow- [fol. 384] ing ideas to cover the cost of administration of the Boards of Arbitration and the expense of the exhibitor representatives of such Boards would be paid to all serving.

"First. That a fee be fixed for filing each complaint by the distributors and no fee be required for filing a complaint by an exhibitor.

"Second. That from the fees so paid the cost of administration of the Boards of Arbitration and the expenses of the arbitrators be paid.

"Third. That if an award is made in favor of an Exhibitor an amount to be fixed in the rules is to be added to the award, which amount is to be payable to the fund for administration of the Boards of Arbitration; that if the award is made in favor of a Distributor, a like fixed amount plus the amount of the filing fee paid by the Distributor is to be added to the award; the fixed amount to be payable to the fund, the filing fee to be returned to the Distributor.

"Fourth. A budget for the cost of administration, including an allowance and railroad expenses to the Exhibitor representatives of the Boards of Arbitration, be worked out by the Joint Committee.

"The Distributor Committee does not feel that either this suggestion or the proposal made by the Exhibitors has any rightful place in the contract itself, but the Distributors' suggestion can be embodied in the rules of arbitration.

"This whole matter is so different from anything the Distributors' Committee came prepared to act upon and is so experimental that we would want to move with the greatest care so that all parties affected by such proposed change, whether Distributors or Exhibitors, can consult the interests they represent. This, we believe, could be done at a reasonably early date and then arrangements could be made whereby the Distributors and the Exhibitors could together [fol. 385] work out a plan which could be made as an amendment to the rules of arbitration. We do not believe this matter should block the present action on the finishing of the contract and the rules."

Then the exhibitors replied to that counter-proposal:

"In failing to concur with the Distributors suggestion in answer to the Exhibitors proposal on Clause 14 the Exhibitor group feel that the Distributors possibly have failed to grasp the importance and sincerity of the Exhibitor's proposal to its fullest extent.

"In providing in the contract a method of maintaining organizations we are attempting to first insure the future of arbitration and more important problems that are and will always be present. Both we feel are common problems.

"As far as Arbitration is concerned it is but a part. Arbitrators of the type necessary cannot be secured with money. These men must have, in addition to inherent ability and honesty of purpose the interest of the industry at

heart, men in touch with the problems that present themselves constantly, men who have an interest in exhibitor problems and who have as a background an organization in which they have confidence and to which they feel a sense of proper responsibility.

"Without such an organization they are without a source of birth. The Distributors have seen this and have taken care of the situation partially by the organization of the Film Boards of Trade. Through this method they have improved the Distributor plan of arbitration materially. Yet this expense is indirectly born by the entire industry.

"Men of this type care for little more than necessary expenses to carry on this work and are not interested in any attempt to buy their services or a plan to cover such petty expenses. They will serve as a matter of responsibility to the organization they are selected from feeling that thru [fol. 386] organization they can assist in the elimination from the industry unfair elements or guide in the right direction, others who haven't such a wide vision.

"But the situation cannot stop here. There are other duties that both exhibitor and distributor owe to each other that must be carried on if the contractual relations are to be harmonious. Any injury to either indirectly injures the other. Whether individuals approve or disapprove the inclusion in the contract of a provision to prevent this is not important for we are face to face with a broad principle and the industry cannot be injured or retarded by the convictions of a few.

"Efficient organizations on both sides spells of thoughtful arbitration. Lack of organization makes this almost impossible.

"Efficient organization, properly manned means reduction of overhead expense in doing the very things that are now and have been facing us. It is a deplorable situation to know, as has been stated here that lack of organization on one side is shifting an undue burden on another branch of the industry and force the expenditure of large sums of money and personal effort to gain for the industry only that which is deserving and when balance organization means less of this expense which must be absorbed or passed on.

"The Exhibitor group respectfully recommend that the Distributor appreciate the sincerity of this proposal and re-

consider this partial suggested solution consult with whom you desire, but finally arrive at a definite conclusion on the matter.

"The Exhibitor group have taken into consideration the Distributors' statement that they do not desire to assume responsibility for the collection of the money the Exhibitor group feels is necessary to guarantee the successful continuance of arbitration and other activities of benefit to the entire industry and therefore suggest that this matter be left to a seventh arbitrator. If a satisfactory solution shall have been reached before the time fixed for the hearing, the [fol. 387] matter can be withdrawn."

In that connection I believe I should state that the resolution which appointed this Committee not only provided that the appointment of the Committee to study and agree upon a contract, but it provided that the general terms of the contract should be agreed upon, and if the members of the Committee could not agree——

That the terms of the contract itself should be arbitrated; and if the Committee could not agree the Committee be then asked to request the Chief Justice of the Supreme Court of the United States to appoint a seventh arbitrator, and his decisions would be final. Continuing—

In answer to questions by the Court:

I referred to Paragraph 1 of the resolutions which are already in evidence. As Exhibit Y. Continuing with the Exhibitor's statement: "The Exhibitor group——"

The clause that I said was withdrawn is the sentence in the exhibitors' statement commencing with "If a satisfactory solution shall have been reached before the time fixed for the hearing, the matter can be withdrawn." The matter of financing these exhibitor organizations.

I mean withdrawn from arbitration.

"The Exhibitor group are reluctant to take the responsibility of pledging that the Exhibitor will pay taxes levied [fol. 388] against the Distributor without first consulting with Exhibitor leaders and suggest that this matter too can be left to the seventh arbitrator with the same provision that if the decision of those whom we represent is favorable this matter can and probably will be withdrawn.

"The Exhibitor's proposal to add to Clause Fourteenth a provision to the effect that from the rentals derived by the Distributors from the licensing of their pictures the Distributors should deduct a sum equal to one per cent thereof to be paid into a fund, half of which should become the property of a national exhibitors' organization and of all of the exhibitor state organizations throughout the United States is one which in the opinion of the Distributors cannot properly be made a part of the Standard Exhibition Contract by reason of the subject matter of the proposal, which is beyond the scope and province of the Joint Committee. This is borne out by the resolution which appointed the Joint Committee, to 'institute a study of the provisions of such Standard Exhibition Contract and the rules for the arbitration provided for therein and develop improvements in such contract and in such rules for arbitration and develop for the further operation of arbitration.'

"When the exhibitors first submitted their proposal, the only part which the Distributors could consider seriously was that pertaining to arbitration and its support. Recognizing that provision for meeting the expense of arbitration provided for in the contract may be properly included in the rules of arbitration, the Distributors renew their suggestion to cover the cost of the administration of the boards of arbitration and the expense that the exhibitor representatives of such boards would be put to by serving, made in response to the Exhibitors' original proposal.

"We further desire to point out to the Exhibitors that in our opinion their proposal would result in forcing all dis- [fol. 389] tributors into the position of at least indirectly coercing exhibitors not members of any national or state exhibitor organization to pay many millions of dollars for the support of such organizations and a Distributor organization.

"For these reasons the Distributors urge the Exhibitors' Committee to reconsider their proposal and withdraw it so that the Joint Committee may proceed to consider all other open questions.

"The Exhibitor group withdraw their objections to Clause 14."

The seventeenth clause of the 1926 contract became the fifteenth clause of the 1928 contract. That clause originally

was put in at the request of the Exhibitors, and in each of the contracts beginning with the uniform and up to and including the current contract the exhibitors have always asked that a minimum admission fee be specified in the contract, because of the constant and continuous claims made by exhibitors throughout the country against distributors, at least, complaints instead of claims—that they were selling their pictures to so-called wagon circuits, free shows, tent shows, and itinerant exhibitors.

The free show question has been one that has agitated the industry for a long time; and particularly the so-called non-theatrical show. The merchants in a town arrange with an operator of a picture machine to give a picture show on the Common or public square, generally on a Saturday [fol. 390]night or Friday night, which brings in the people from the surrounding country, the merchants believing that it brings trade to their stores.

The local exhibitor of the town complains of that, and takes the position that he is the showman of the town, and if the townspeople want to see a show they should come to his theatre and pay an admission. The salesmen and branch managers of the distributors, naturally, when an application is made for a picture or pictures are anxious for the business; and it is because of the sale of pictures or the licensing of pictures to these free shows and non-theatrical accounts for instance, like Y. M. C. A.'s and churches, that do not charge any admission then they give a show and other civic institutions, that the exhibitors have insisted always that the contract contain a provision that there should be at least a minimum charge, so that these free shows could not take place.

The Court: Does the government attach any significance to that limitation shown?

Mr. Thompson: The minimum admission charge?

The Court: Yes.

Mr. Thompson: No special significance, your Honor.

The Court: Whether it is an illegal method of price fixing of any kind?

Mr. Thompson: I think some question might be made of it.

[fol. 391] The Court: I mean do you in this suit?

Mr. Thompson: As one of the many things. It is merely one of cumulative effect.

A. (Continuing:) The eighteenth paragraph of the 1926 contract became the sixteenth paragraph of the 1928 contract; and much discussion was had concerning that.

As it appears in the 1928 contract it is changed from the 1926 contract, by making an amendment at the end of the first paragraph by eliminating from the 1926 contract the ten day limit within which the exhibitor had to send notice of cancellation after the expiration of the three months' period to the distributor. By the elimination of that phrase the exhibitor would have the right at any time, I suppose within a reasonable time, after the expiration of the three months' period to send a notice of cancellation.

The second paragraph that deals with delays and prevention of performances in the case of the distributor. There was added at the request of the distributor the phrase "of the United States Postal Authorities." There was omitted from the 1928 contract the clause which excused the delays caused by the failure or delay of any prior exhibitor in returning or forwarding prints.

This omission was made to conform to the elimination of the provision in the 1926 contract requiring the exhibitor [fol. 392] to assert a claim upon such act against the prior exhibitor; and there was inserted that in the case of any delay or prevention, should prevent the distributor from finally releasing any photoplay during the period specific in Paragraph B of Article II, the provisions of such paragraph should govern.

That was put in for this reason: In the first Uniform Contract there was a provision which required at the end of the season that in case any of the pictures were not delivered the exhibitor should be obliged to take them after the expiration of the season.

In the 1926 contract at the request of the exhibitors that was eliminated; because they stated that if the distributor did not deliver they should not be obliged to take the pictures which were released after the time specified in the contract.

Put in the 1928 contract they again took the position in respect to those pictures that they should have some option with respect to the pictures which were not delivered that they had contracted for; so the provision in sub-division B of the second paragraph of the 1928 contract was added

which provided that if the distributor does not generally release—and that means does not generally distribute throughout the country prints of the pictures which the dis- [fol. 393] tributor has for distribution—the picture contracted for during the period beginning with the distributor's releasing season—the beginning and ending of that season being fixed by the distributor, it being a period of one year either from August 1st of one year to July 31st of another year, or from September 1st of one year to August 31st of another year, which I call the distributors' year.

If any pictures contracted for were not generally released during that distributor's year, the exhibitor was given the privilege to require the distributor to deliver those pictures if they were released at any time—if they are released at any time within two years after the expiration of the distributor's year, upon giving the distributor notice of election to take those pictures.

The underlying reason for the exhibitors' request in that respect is the practice that some of the distributors indulged in in prior years of withholding from releasing during a releasing year toward the end of it two or three pictures that seemed to them to be rather outstanding, and that had been sold the year previous for rentals that they felt, after the expiration of eight or nine months, could be increased if the pictures were resold and the exhibitors very properly said the distributors should not be in the position, having made a contract for pictures to hold them.

And release them at a subsequent year and resell them [fol. 394] without giving the exhibitors who had contracted for those pictures the option to say whether or not they wanted the pictures, that is the reason that clause was added. That appears in B of the second paragraph of the second article in the 1928 contract. It makes a reference to it in this 16th.

Now, article 19th of the 1926 contract, without change, became article 17th of the 1928 contract.

Article 20th is the arbitration clause of the 1926 contract. That became article 18th of the 1928 contract. That is number 20 of the old one.

There were some slight changes made in that article by fixing the time in the fourth paragraph,—by fixing the time within which the distributor had to comply with the award

against him, making the time the same time as that specified in article 20th of the 1928 contract.

Within the number of days specified in article 22nd. That has never been in the rules or contract and the exhibitors suggested that the time be fixed within which the distributors should be required to comply with the award against them.

That fixed the time for different cities.

Now, article 21st of the 1926 contract became article 19th of the 1928 contract, slightly changed by the addition of the first five words of the clause. The words are: "This con-
[fol. 395] tract is complete and."

Article 20th of the 1928 contract is a new clause, which resulted from the declaration of policy made by the distributors at the Trade Practice Conference, with respect to block booking. There were many days spent on this clause, in discussion. It was finally agreed upon, and it is a new departure in the picture business, allowing the exhibitor, after contracting for a group of photoplays, which are offered to him at one time, to cancel out ten per cent of the number, upon complying with said conditions.

I think the reasons for requiring the exhibitor to pay one-half of the rental for cancelling out these pictures, should be stated.

At the Trade Practice Conference, the discussion of block booking lasted practically all week until finally the agreement of the distributor representatives and the exhibitor committee representing the unaffiliated theatres that had been conferring with the distributors resulted in this declaration of policy, and it was pointed out there that if ten per cent of the pictures that were sold by the distributors, were cancelled by the exhibitors, it would mean that every distributor would be doing business at a loss. In other words, that the burden that would be imposed upon the distributor for cancelling that number of pictures that had been sold, would result in a loss on the year's business.
[fol. 396] They could not operate at a profit, so out of that, came the agreement on the part of the exhibitors that if half of that loss was borne by the exhibitors, and half by the distributors, that would possibly be a solution for the block booking question.

While the distributors did not wholly agree, they declared the policy—what their views would be in the record and

that declaration was carried into the contract in the form of clause 20.

After the Chicago meeting, there seems to have been some confusion by the omission of the word "feature" photoplays in the second line, which reads: "that the license herein granted shall apply to the entire group of photoplays" the word "feature" was omitted and the distributors took the position that it was contemplated at the meeting that this allowance should apply to features and not to news reels or short subjects or other classes of pictures, so all the members of the contract committee were communicated with; the facts were stated, and they all agreed unanmiously, that the word "feature" should be inserted in the 1928 contract.

In answer to questions by Mr. Grosvenor:

The meetings ended in February of 1928, and this took place in April of 1928. After the contract was printed.

The contract really was not then in use, because the selling season of 1928 started after the 1st of May or the 15th [fol. 397] of May, somewhere around there.

Article 21st of the 1928 contract is a new clause, which developed out of the Trade Practice Conference. That is about giving the exhibitor the privilege of cancelling pictures that contained racial or religious subject matter, which was objectionable to the patrons of the theatre.

There was really no controversy. A situation developed out of the production and release of a picture by one of the distributors that created a demand on the part of religious or racial groups in this country, that it should be suppressed. The picture had been contracted for by many exhibitors, and was a successful picture. Some exhibitors were perfectly willing to use the claim that the picture was offensive, as an excuse to get out of the contract; others were insisting that it be delivered by the distributors, so that the distributor was placed in the position that with respect to some he had to deliver, and with respect to others it was not necessary to deliver. The distributor having agreed with the representatives of this racial group to withdraw the picture, at a tremendous loss, therefore——

It was the "Callahans and the Murphys". These racial pictures were discussed. This paragraph provides that the

claim shall be immediately submitted to the Board of Arbitration? That was at the suggestion of the exhibitors and the distributors. It was a natural suggestion that sprang [fol. 398] out of the discussion and everybody agreed that the Board of Arbitration should determine the question.

Under this clause, there have only been in 1928, I think, three or four cases; with relation to the picture, "The King of Kings", in some localities it was claimed that it contained religious matter that was offensive to some people, and the exhibitors presented the matter to the Board of Arbitration for determination, but I do not think there was any determination in those three or four cases, because either the distributor consented to permit the exhibitor to cancel the picture or the exhibitor finally agreed to exhibit it.

The 22nd article of the 1926 contract became the 22nd article of the 1928 contract, with some slight changes.

The provision that the delivery of the print or the furnishing of advertising accessories shall not be deemed an acceptance of the application, is new. Then the time within which an application must be accepted in a number of cities was changed.

A new provision was added to the effect that all applications signed at the same time by the exhibitor must all be accepted or rejected or be deemed withdrawn. That was put in at the request of the exhibitors who claimed that in signing a series of contracts at the same time, they contemplated making one offer with respect to them all, and [fol. 399] that the distributor should not continue the practice of selecting the best of the offers and rejecting the least attractive.

The exhibitors wanted either their entire offer to be accepted or rejected, and the distributors agreed to it and that provision was put in.

Then there was an addition made to the direction to salesmen, which has appeared upon all forms of contract. That is at the very beginning of the contract. I skipped something about the history of the direction to salesmen. It was claimed by the exhibitors that prior to the Uniform Contract it was the practice of salesmen to solicit the exhibitor's business and get him to sign an application at the

rental prices fixed, and then to solicit the exhibitor's opposition and use as a basis, the application of the first exhibitor, to increase the prices, and it was a pernicious practice, and the exhibitors were only too glad that there was some way of doing away with salesmen who were anxious to get business that way, while the distributors were anxious to have business they felt that business should not be done in that way.

The claim is still made today that salesmen practice that, and the exhibitors at this meeting in Chicago, sug- [fol. 400] gested that the salesmen be told in this cause that a violation of that direction would mean that they would be discharged.

Q. Did they formerly forward two applications?

A. No, there was just one application made by the exhibitor.

Q. I mean two to exhibitors?

A. They forwarded the best one, and the other exhibitor would never hear of it.

They would take two; they would play one exhibitor against the other. I might say, in justification, or in defense, or in partial defense of the salesmen, that the exhibitors used to do the same thing. They would sign an application with a salesman of the company at a certain rental, and then they would have a copy of that application,—a copy is always left with them and when the salesman of the competing company would come along and try to sell their pictures, they would use that application to beat down the prices of the salesman, saying, "if you can beat this salesman, I will withdraw this application," which they had a right to do in that way they used the applications that they had made, as a lever to beat down the rental prices on their pictures.

Both of these practices were deemed as unfair trade practices by the Trade Practice Conference.

On this same subject, page 64 of the petition at the end of the first paragraph—I mean at the end of the first Uniform Contract paragraph entitled "Direction to Salesmen," that is the manner in which they tried to cover the subject I have referred to in the first contract.

[fol. 401] And it was put at the end of the contract. And now we are sticking it at the very beginning of the contract.

[fol. 402] Exhibitors suggested at the Chicago meeting that it be put at the beginning, the matter had been covered in the second contract.

In answer to questions by the Court:

At the end of the contract?

In answer to Question by Mr. Grosvenor:

There was no special place specified for it. It happens to be at the end of the contract in the 1923, the first Uniform contract, but the exhibitors at the meeting in Chicago asked that it be put in a prominent place, either at the beginning or a place where the salesmen would be sure to see it, although they all know it now, by this time.

In answer to questions by the Court: The only addition we made in 1928 was the punitive sentence at the end.

Now, in addition to the contract, the committee in Chicago, following the provision in the first paragraph of the 1928 contract with respect to approved clauses, took up five clauses that were submitted to them, and approved them. One was a cancellation clause—

I mean warranty as to form. On Friday I went into considerable detail concerning the meeting of the Advisory Committee and the distributors concerning the additional clauses that had been added to the 1926 contract. To avoid that, the Committee considered such additional clauses as the distributors proposed, and they argued about the phraseology of these clauses, and they agreed upon these five additional clauses, which could be added by any distributor by imprinting the clauses in the schedule of his contract.

[fol. 403] First, there was the cancellation clause, the clause with respect to separate applications, which was designed particularly for United Artists Corporation, with an undertanding that it could be added to the schedule only in respect to photoplays produced by a producer not controlled by the distributor, only if the distributor, or producer provides that such pictures shall be sold separately

and apart from other pictures distributed by the distributors, and shall be of no effect unless it is specifically agreed to in writing by the exhibitor.

Then the road show clause, which took up two days of discussion in Chicago was agreed upon. Oh, there were fifty points of difference as to that clause.

In answer to questions by the Court:

I went all over them, it would take me a day to go into details of the differences.

Q. I think you explained it very thoroughly the other day.

A. Then percentage bookings, a clause which covered percentage bookings was agreed upon. That took a tremendously long time to come to an agreement on, and I explained that.

Then the liquidated damage clause, that also was a clause, I remember very clearly it took a tremendous long time to agree upon, and what finally brought about an agreement was the suggestion of the exhibitors, which appears at the [fol. 404] very end of the clause beginning with the words "provided, however, if the exhibitors shall exhibit such photoplay for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed upon a sum equal to 75 per cent of the gross receipts of said feature for the last day of exhibition thereof, of such photoplay."

They took the position that if a man made a contract for a percentage booking and the picture did not hold up, that is, the receipts were not as much as the exhibitor expected, and the exhibitor withdrew the picture, naturally he would be liable for damages to the distributor for not showing it, but there would be no basis on which you could calculate the rental, so they contended that after a picture had been shown, that on the last day of exhibition, the gross receipts would not be as great as the first day or the previous day, so they therefore made that suggestion. I think that brought about an agreement on that clause.

Now then, the exhibitors suggested that certain directions be agreed to, which appear at the end of the printed

form, that is being circulated. I do not know whether they appear in the petition or not.

Oh, yes, the directions at pages 106 and 107. Primarily the suggestion that the exhibitors wanted to incorporate or have carried out, was that the contract or schedule should [fol. 405] appear on the same side where the exhibitor signs because that is where the film rental was put in, that is where the film rental was specified, where the name of the picture was written in and the number of days it was to be shown, and he should have that before him when he signed the contract.

If you will give me one of the latest forms I will explain it to his Honor.

This is Paramount form, the beginning of the contract is really on the back of the sheet. It starts with the directions to salesmen; then the terms of the agreement continues over onto page two, and then comes the schedule. There is the schedule (indicating). When the exhibitor signs, he sees he has got the number of days he contracts for and the price he agrees to pay, right in front of him. Here is an example of two additional clauses approved by the Contract Committee, being added to the schedule, percentage booking and the liquidated damages.

By the Court:

Q. Those always appear on the face of the sheet that is signed by the exhibitor?

A. Exactly. That was the purpose of that suggestion by the exhibitors.

A further result of the Trade Practice Conference appears in these directions, in the last paragraph, that no re-issues of photoplays or old negatives, renamed, shall be in- [fol. 406] cluded in any group of photoplays that are sold as a block. That was part of the declaration of policy of the distributors. No short subjects or news reels shall be included in the group of feature photoplays; that is part of the declaration of policy, and the licensing of news reels or short subject groups shall not be made a condition of licensing the exhibition of feature photoplays and vice versa, provided that the distributor may include in any long term franchise and or service contract, feature photoplays, short subject photoplays and news reels.

Service contracts have come into the industry in the last two or three years, where the exhibitor at a stated sum per week, contracts for and receives a feature picture and news reel and comedy and, I think, a serial.

That is a form of contract that appeals largely to the small exhibitor, who is depending on a well rounded program, and he contracts for the service at so much per week, and he is entitled to so many pictures of each class during the week.

In answer to question by Mr. Grosvenor:

I think I ought to say that at the end of the meeting in Chicago of the Contract Committee, after days of negotiation we agreed upon the contract, but this question of financing the operations of the Boards of Arbitration and the local exhibitor organizations were still open, and had not [fol. 407] been determined. In justice to the exhibitors I think I ought to read the reservations they made:

"The Exhibitor group approve the present Arbitration clause now known as Clause Twentieth, with the understanding that an immediate effort will be made to provide ways and means to insure the future of arbitration and other necessary activities of benefit to the entire industry through a plan of adequately financing exhibitor organizations.

"We feel that the present plan of having the Distributors, through the Film Boards of Trade, organized and many States with inadequate Exhibitor organizations does not tend toward equity in arbitration.

"If prior to June 1st no such plan is agreed upon, the Continuing Committee on the Contract will again meet, at a place to be designated later, (to make whatever amendments, eliminations or additions to the Contract they or the Distributors, after a more carefuly study of the situations, deem necessary, and specifically to discuss a more equitable method of arbitration in the absence of a plan to provide the help necessary to carry on arbitration and other necessary activities, and that such meeting or meetings shall be carried on in the manner prescribed by the resolution that makes such a meeting or meetings possible."

That contract was then finally drawn, and the rules of arbitration were finally drawn. I have not stated in what

respects they were changed. There were several changes in those. This was the contract which was signed then; the members of the Committee on February 20th signed that contract. That is the contract.

Mr. Grosvenor: The first page of the contract being a list of the signatures, is offered in evidence. The rest of [fol. 408] it is attached to the petition as Exhibit C.

(Marked Defendants' Exhibit A-1.)

The Witness: I will proceed with the narration of the discussions relating to the changes in the Rules of Arbitration. There were not very many changes in the Rules. The paragraphs were renumbered. Paragraph 2 of the December 1st, 1926, rules the phrase "To serve for three months and thereafter until his successor is appointed" was taken out and made Paragraph 3.

I am referring to Rule 1, second paragraph. It was made paragraph third. And the three months' period was changed to one month.

In that same paragraph, that second paragraph of the Rule 1 after the word "Mayor" there was inserted "or other chief executive."

In that same paragraph the phrase "President of the Film Board of Trade" in the sentence "failing such appointment the designation of exhibitor representatives and alternates shall be made by the president of the Film Board of Trade" these words were stricken out, and there was inserted in there "the then president of the American Arbitration Association."

That was made at the suggestion of the exhibitors. Then the sentence that follows. That whole sentence was made a separate paragraph, and numbered Paragraph 3. There was inserted after the word "alternates" in the sentence "each of the exhibitors' representatives and alternates," [fol. 409] there was inserted "and each of distributors' representatives and alternates:" and the three months' period was changed to a one month period.

In answer to question by the Court:

I am still on the second paragraph of Rule 1.

In answer to questions by Mr. Grosvenor:

It becomes Paragraph 3 of Rule 1.

I do not think there was a term of office of these arbitrators specified in the original plan. Then there was a three months' term specified in the Rules of March 1st and December 1st, 1926; and there were complaints made by exhibitors that the distributors' representatives did not rotate often enough, and there were complaints made by the distributors that the exhibitors were sitting too long, and had become set in their ideas; and it was agreed that these Boards of Arbitration should be changed monthly. But in practice, and I have made inquiry among the secretaries,—in practice while the distributors' representatives are now changed either monthly or every three months, some of the exhibitors' representatives have sat on the Board since the beginning; and some men have been acting as arbitrators for the last three or four years. They are perfectly acceptable to the distributors' representatives, and they seem to be acceptable to everybody concerned in the territory. They are looked upon as men of integrity and standing, and nobody even suggests that they get off the Board. Their appointments are continued from year to year by their own exhibitor organizations. I think there is one Board where [fol. 410] one man has sat for five years ever since the Board was organized, and nobody thinks of suggesting that he be changed. In some territories the Arbitration Board meet once a week where the territories are heavy; and in others they meet very two weeks. I think in some of the outlying territories they meet once every month.

In answer to question by the Court:

The objection of the exhibitors to the old scheme was that they would come before three distributor representatives who had sat for six months, and they wanted to see that all the distributor representatives acted as arbitrators. In other words, they wanted fresh minds and fresh viewpoints of other distributors; but so far as the distributors were concerned the same condition obtained with respect to the exhibitors; but we have made no point about the exhibitors continuing to sit year in and year out as arbitrators.

I believe up in Detroit there are some arbitrators who are sitting today who were arbitrators before this Arbitra-

tion Plan went into effect. Detroit had an Arbitration Plan of its own before this Uniform Contract, and there are exhibitor representatives on the Board who acted then and who are still acting today as arbitrators.

In answering to questions by Mr. Grosvenor:

The local exhibitor organization appoints them. That organization in Michigan, in Detroit, appoints them.

[fol. 411] Proceedings with the Rules in the paragraph beginning, which is now the Fifth Paragraph of the Rules "Upon written notice given to the secretary of the Board of Arbitration at least one week prior to the date fixed." the one week was changed to seven days.

There were no further changes in that Rule excepting in the last paragraph after the word "Mayor" the words "or other chief executive" were added.

Then in Rule II there was added a new paragraph 1 which appears on page 137 of the petition. That was added. I will read that, "the members of the Board of Arbitration shall at each meeting thereof designate from among their number a chairman whose duty and authority as chairman shall be strictly limited to maintaining order to the end that all proceedings before the Board of Arbitration shall be conducted speedily and with decorum."

Now, the phrase in Paragraph 2 beginning with the Number 4. That is in Rule II. I am taking the 1926 Rules and saying what changes took place.

Mr. Grosvenor: That is in the petition, your Honor, at page 129, A. Beginning at the bottom of page 128 of the petition that is the 1926 Rules. The second line from the bottom, "and (4) in the event of the failure of the exhibitor to submit to arbitration or to comply with the award or in the event the exhibitor has been found to have com-

[fol. 412] mitted such a breach of contract as in the opinion of the Board justifies distributors represented by members of Film Boards of Trade——"

That phrase was omitted, because it seemed that the first three provisions were sufficiently broad to cover that. And the word—if your Honor will follow me here,—the word "to" was stricken out, and the word "shall" inserted in place of it.

At the end of that paragraph there was added the phrase "in the event of the failure of the exhibitor to submit to arbitration or to comply with the award."

There was no change in 3, 4, 5 or 6.

In 7 the phrase in the second line beginning "contract containing provisions for arbitration substantially in accord with the said arbitration clauses excepting with the written consent of both parties to such claim or controversy" was omitted; and there was inserted. There was inserted this language. I am referring to first Section 1 there. It is on page 138 of the petition, paragraph 7. "unless the same arises under any contract other than those mentioned in paragraphs (a), (b) and (c) of this Rule, excepting with the written consent of both parties to such claim or controversy."

That was done at the suggestion of the exhibitors themselves. It was always the claim of the exhibitors since [fol. 413] arbitration started that nothing should be arbitrated except the Standard Exhibition Contract. They were always insisting, and in fact Boards of Arbitration throughout the country at the beginning refused to arbitrate contracts that contained changes. They took the position it was not a uniform contract. Some of them when the contract of 1926 was put into effect and the distributors added these additional clauses I spoke of, announced publicly in the trade press that they would not be applicable to those contracts, because they were not the standard contracts, and the distributors had violated the warranty by adding clauses. We had considerable difficulty for a short time in that respect.

Those clauses to which I referred, a, b and c, are found in the new Rule IX; and they are limited now to the three contracts.

That is, we limit the jurisdiction of the Boards of Arbitration to the Standard Exhibition Contract.

Referring to the 1926 Rules at page 130 of the petition the paragraph at the top of the page, the period within which a controversy must be submitted for determination to the Board of Arbitration was changed from one year to nine months at the request of the exhibitors. That is the statute of limitations.

[fol. 414] In answer to question by the court:

This is in the new Rules; at page 138 of the petition paragraph 8. The next paragraph was not changed; and then the following—

In answer to questions by Mr. Grosvenor:

There was much discussion relative to cutting down the statute of limitations from one year to nine months. I think I have mentioned it two or three times. The exhibitors took the position that the distributors should be obliged to present their claims as speedily as possible after the breach claimed under which the dispute arose.

The Court: I think we have been all over that.

The Witness: I think we have been all over that. There was added to Rule II the paragraph which appears in the 1928 Rules at page 139 of the petition which is marked "C," and simply added the current contract, the 1926 contract.

As to Rule III the first paragraph of Rule III of the 1926 Rules at page 130 of the petition was changed for clarity. There was no change in the substance. To paragraph 2 of Rule III of the 1926 Rules there was added the phrase "and of the time and place of hearing." There was no change in paragraph 3, the last few words on page 130.

The exhibitor representatives requested that notice be given to the local exhibitors' association. That change had been made in the 1926 Rules. After the third paragraph of [fol. 415] the 1926 Rules there was added a paragraph which is the paragraph 4 of the Rule III of the 1928 Rules, and appears at page 140 of the petition. That is the provision which I discussed where either party to a controversy should demand a hearing in less than five days on twenty-four hours' notice. That appears at 140 of the petition, paragraph 4. That is a brand new provision. That was at the request of the exhibitors.

Paragraph 4 of the 1926 Rules was renumbered and made No. 5; and the second paragraph was numbered 6; and there was a paragraph added, the seventh paragraph, which appears on page 141 of the petition in the 1928 Rules, which provides for the default, what shall happen in the case of default of either praty. That was a new provision.

In Rule IV of the 1926 Rules there was a change in a very slight respect. I think it can be stated generally that where it appears that the Board of Arbitration should from time to time notify, that the words "the secretary of the Board" was inserted.

To that Rule there was added a paragraph which appears as paragraph 4 in the 1928 Rules at page 143 of the petition. That is the one I explained, I believe the other day, where if an exhibitor asserts a claim against a distributor for a miss-out of a show the distributor can bring [fol. 416] in the offending exhibitor, or if one exhibitor has a claim against another exhibitor he can bring him in.

That seems to have come out of the discussion. I think the distributors asked for that—yes, I am sure of that. I am sure they did. That came out of the discussion of the elimination of that provision in the contract that I have referred to.

To the fifth paragraph of the 1926 Rules beginning at page 133 of the petition, there were added the penalty provisions against distributors which appears at page 144 of the petition, being Paragraph 6 of Rule IV.

Mr. Grosvenor: The ten per cent, the last six lines, paragraph 6 of rules IV, the last six lines "there shall be added to the amount of such award."

The Witness: Then there was a new Rule V that was added that covers damages for bicycling and switching; and the second paragraph of Rule V of the 1928 Rules which appears on 145 of the petition was added. That was new. All of Rule V relative to damages and copyright matters is new. I will give a brief description of how that came to be adopted since the inception of the industry. I think the term "bicycling" is as old as the industry. It was the practice of some exhibitors to contract for a pic- [fol. 417] ture for one theatre, and then with his bicycle to ride it to another theatre and get a rental for it, or show it in another theatre that he owned and operated himself.

The distributors have always been cognizant of it, but they really did not take any action in respect to it excepting as it was discovered by mere chance until about two years ago, when because of the many complaints that had been received about bicycling and switching of pictures, and particularly with respect to holding pictures for more

days than contracted for, I was asked to suggest some means to remedy the situation. I made an estimate as to the losses after two years of contact with the work. I think the distributors lost ten million dollars a year by the unauthorized exhibition of their pictures.

I communicated with the secretaries of the Film Boards of Trade, and asked them to report to me what bicycling cases they knew of in their territory.

The first report I received was from St. Louis, and when I got it I did not know what to do with it, because they listed thirty or forty suspected "bicyclers," as they called them; and I did not know how to handle it.

I then got in touch with the Secretary of the New York Film Board of Trade, where they had in New York for a number of years conducted a department to investigate the unauthorized uses of pictures; and I spoke to Mr. Phillips, [fol. 418] and I told him of my situation, and I asked him if he could help.

He told me that he had a young man that had charge of that work in his office, and he would be very glad to let me have him for a short period; so I met this young man and talked to him, and sent him to St. Louis. After three months' investigation by this young man out there the report staggered the representatives of the distributors. He found, for example, one theatre that had been in operation for two or three years that was owned by a small group of exhibitors, that had never paid a dollar's worth of film rental; never paid a dollar's worth of rental in the two years.

As a result of the report made by this young man that was sent to St. Louis, there was organized a Bureau which we called "The Copyright Protection Bureau," to make investigations of these practices, alleged practices of exhibitors.

That Bureau has been in operation for nearly two years; and when at the Chicago meeting I presented the facts to the exhibitors' representatives and explained to them, they very promptly said "let us incorporate a provision that will make the offending exhibitor realize that it is an offense, and wipe out this evil practice, because when exhibitors continue the practice and get away with it and get

their pictures without paying rentals, it simply places their competitors in the most terrible conditions, competing with [fol. 419] a man who is not paying anything for his pictures;" and they very promptly agreed—in fact, there was no question about this Rule at all.

The exhibitor representatives on the Board of Arbitration are wholeheartedly in favor of any plan that will help to wipe out this evil that I have talked about.

There is one more rule, Rule No. VI. That was a new rule that was suggested by, I believe, the exhibitors, or it came out of the meeting, that there were to be no changes in the Rules and Regulations without the approval first obtained of the Contract Committee. They struck out the Rule that had been in the 1926 Rules.

The members of the Contract Committee, exhibitors and distributors, signed this document which you show me. That is the document that they signed approving the rules.

(Document offered in evidence and marked Defendants' Exhibit B-1.)

In answer to questions by Mr. Thompson:

It was signed in Chicago, at the end of the meeting.

In answer to questions by Mr. Grosvenor:

It was signed at the same time that the other paper was signed. And omitting the first page containing the signature, the balance entitled "Rules of Arbitration" is attached to the petition as Exhibit G.

[fol. 420] The Contract Committee made a statement of their work and issued that to the trade after the contract was signed. They agreed upon a statement and it was issued to the press in Chicago. That is a copy of the statement.

Mr. Grosvenor: I offer that in evidence.

By the Court: What had become of the Federal Trade Commission?

A. The Federal Trade Co[illegible]sion took no action in regard to the Trade Practice Conference until they issued that pamphlet in May of 1928. That was after the conference.

Mr. Thompson: I object, your Honor, to this press statement as irrelevant and immaterial, being purely a narrative.

Mr. Grosvenor: It is offered on the issue of intent, of the action of those defendants in regard to the alleged conspiracy.

Mr. Thompson: I do not see what publicity they gave out has to do with this.

The Court: I do not think it has very much bearing but I will take it merely as a part of the story.

(Marked Defendant's Exhibit C-1.)

In answer to question by Mr. Grosvenor:

Mr. Woodhull, the president of the Motion Picture Theatre Owners of America attended practically all of these conferences, although he was not a member of the Committee. He was recognized at the meeting as the chairman of the unaffiliated group of exhibitors coming from the Fed-
[fol. 421] eral Trade Commission, Federal Trade Commission Trade Practice Conference; and Mr. Cochrane, he was recognized as the chairman of the distributor representatives in the Trade Practice Conference.

Mr. Woodhull issued an official statement at the conclusion of that Contract Committee meeting. This is a copy of it.

The Court: Why does that go in? I let the other one in because it had already been marked. That is about the only reason.

Mr. Thompson: Same objection to that one, your Honor.

Mr. Grosvenor: Do you mean we must call Mr. Woodhull? Is that your objection that Mr. Hess is testifying to it?

The Court: Is it offered as proof of the facts recited? Certainly the other paper was not received on any such basis.

Mr. Grosvenor: No, not to prove the acts recited. The object is to prove that all these acts were in cooperation as testified to with the exhibitors.

Mr. Thompson: This purports to be issued by Mr. Woodhull who is not shown to be a member of this Contract Committee, or who had anything to do with it.

The Court: Let me see it.

Mr. Thompson: It seems to me a statement of any opinion of his is purely irrelevant.

The Court: What is the purpose of it, Mr. Grosvenor?

[fol. 422] Mr. Grosvenor: Mr. Woodhull, the witness testified, attended the meeting of the contract committee, as chairman, unofficial chairman of the representatives of the exhibitors on the contract committee.

The Court: At what meeting did you say that was?

Mr. Grosvenor: At the Trade Practice Conference meeting.

The Court: Were there any other unaffiliated exhibitors there?

The Witness: Yes, the three representatives on the contract committee were unaffiliated exhibitors.

The Court: What particular delegates elected Mr. Woodhull?

The Witness: Sixty-four unaffiliated exhibitor delegates at the Trade Practice Conference selected Mr. Woodhull, as their chairman.

Mr. Grosvenor: The testimony was, several days ago, your Honor, that these three members of the contract committee represented the exhibitors whose names appear on these two documents.

The Court: Does that add anything more than you showed several times, that these gentlemen sat on the committee and voted on what was done?

Mr. Grosvenor: That is only additional to it.

Mr. Thompson: I do not think there is any evidence that Mr. Woodhull sat on the committee at Chicago.

The Witness: I testified that he was there, present.

Mr. Thompson: I thought these six men named here were the delegates and the alternates.

[fol. 423] The Witness: They were the delegates and alternates.

Mr. Thompson: And there was nobody else?

The Court: If he was not there, I take it as showing his approval.

Mr. Thompson: I do not think there is anything in the record showing what connection he had with the committee.

The Court: I assume if a man makes such a claim he knows what he is talking about. Objection overruled and it may be received.

(Marked Defendants' Exhibit D-1.)

The Court: Does the witness know that that was his statement?

The Witness: Yes, I do know it was his statement. I was present when it was drawn up and issued. Mr. Woodhull was present. He attended practically every meeting of the contract committee in the city of Chicago and was present during the discussions most of the time.

In answer to questions by Mr. Grosvenor:

There was a further meeting of the Contract Committee contemplated in June but it could not be arranged for, but there was a meeting of the Contract Committee held in the city of New York, in October to further discuss the plan proposed by the exhibitors to finance arbitration and their own organizations, in other words to deal with this question [fol. 424] that I referred to. That had been left sort of open. Those who attended the meeting were Mr. Richey who had acted in Chicago as secretary of the Committee of Unaffiliated Exhibitors.

By the Court: That was held when?

A. In New York City, in October.

The Court: That is all after the commencement of this suit, is it not?

Mr. Grosvenor: Yes, your Honor.

The Court: What is the purpose of it?

Mr. Grosvenor: To complete these negotiations regarding Exhibit G and Exhibit C attached to the petition as part of the case; it completes the story and brings us down to date. It will only take a minute or two.

The Court: All right.

In answer to questions by Mr. Grosvenor:

In addition to Mr. Richey there was present Mr. Cole, one of the alternate delegates;

Mr. Bernstein, one of the exhibitor delegates,

Mr. Yeomans, an exhibitor delegate,

Mr. Beichele, an exhibitor delegate.

Mr. Feist, a distributor delegate,

Mr. Depinet, a distributor delegate,

Mr. Kent, a distributor delegate,

Mr. Schnitzer, one of the distributor alternates,

Mr. Cochrane, who was chairman of the distributor group [fol. 425] at the Trade Practice Conference.

Mr. Woodhull, I believe, was there, chairman of the Unaffiliated Group of Exhibitors at the Trade Practice Conference. I believe I have a memorandum of exactly who were there.

The document, dated October 5, 1928, you show me is the memorandum which I refer to. I think the meeting lasted two days, two or three, I am not certain.

They discussed this plan that had been taken up by the exhibitors in Chicago to finance their own organization; that all the exhibitors pay a percentage of their rentals or that the distributors take off a percentage of their film revenue.

They discussed it pro and con, forward and backward, and they finally agreed upon a plan,—the distributors always taking the position that any plan that they would discuss, would have to be limited to adequately financing the operations of the Boards of Arbitration alone, and they would not discuss any plan which would include financing or supporting either the national organization of the exhibitors or the state organization of exhibitors.

Well, they finally agreed,—all of them agreed that if the distributors would recommend and urge the theatres which are owned or controlled by the distributors to join the local exhibitor organizations and if the local exhibitor organiza- [fol. 426] tions would permit them to join, as the National organization had in November, I think, or in September of that year, at its convention in Toronto, which announced that it welcomed these exhibitor representatives of affiliated theatres, why the amount of money they would receive from dues in the orderly and usual way, would be sufficient to support the local exhibitor organizations, and the local exhibitor organizations could support, if they were called upon to maintain the arbitration committee in their local territory. A memorandum of an agreement was signed. This is the document which was signed at that time.

(Document offered in evidence and Marked Defendants' Exhibit E-1.)

I have now completed the story relative to the 1928 contract and the 1928 Rules of Arbitration. At the conclusion of the meeting of the Contract Committee, I was requested to prepare an analysis of the changes in 1928 contract.

Everybody that attended the meeting in Chicago, the exhibitors and the distributors, asked me, when I got back, to prepare an analysis of the changes that had been made.

This is a copy of it. I did prepare such an analysis. We sent the analysis first to the members of the committee, as many copies as they wanted, both the exhibitor representatives and the distributor representatives. I sent it [fol. 427] to the general sales managers of all the companies represented in the Film Boards of Trade, with the request that they send it to their branch managers, and I sent a sufficient number to all the Film Boards of Trade secretaries to distribute among the regional members and their local exhibitor organizations, and I got many, many requests for additional copies which were sent out, generally in the trade.

I think most of the trade papers published it.

(Analysis offered in evidence and Marked Defendants' Exhibit F-1.)

Reverting to the 1926 contract; that was arrived at after numerous conferences, going over each paragraph clause by clause, in comparison with the 1923 Uniform Contract.

There was no definite committee, as there was at Chicago. I met with committees of different organizations and there were committees of individual organizations, committees of the representatives of the Motion Picture Theatre Owners of America; I had conferences with some of the individual managers and presidents of the local exhibitor organizations.

I remember one very distinctly going up to Detroit and conferring with Mr. Richey, who was general manager of the exhibitors organization, and I was there at all the con- [fol. 428] ferences with all the exhibitor representatives as well as with all of the distributor representatives.

The conferences I think lasted about ten months. I am prepared to take up the 1926 contract, clause by clause and state how it was arrived at, in comparison with the 1923 confract.

Mr. Grosvenor: Your Honor, I do not want to do that, if counsel for the Government will stipulate that all the testimony about the 1923 contract, and how it was arrived at, or practically the same procedure, was followed in the 1926 contract, except that there was no committee appointed by a convention of delegates as there was in 1927. Our testimony is, the convention met here at the Federal Trade Practice Conference, and a committee was appointed, unanimously by the representatives, 64 delegates of exhibitors, who had been elected, throughout the country in the manner that has been testified to. In 1926 there were conferences extending for many months. The names of some of the exhibitors that attended those conferences have already been testified to. They appear as an exhibit in the answer,—Exhibits 1, 2, and 3 I believe.

That agreement, your Honor will recall, signed in February 1926, recited that the parties who signed it had agreed on the Standard Exhibition Contract, and your [fol. 429] Honor will recall that the testimony enumerated the position of those eight or nine representatives of the exhibitors.

Mr. Hess testified one was the president of the national organization and the others were delegates or presidents or secretaries of eight or nine other local—six or seven local organizations, like the one here.

I am reluctant to take up that contract clause by clause, in comparison with the 1923 contract, but the Government charges here that that contract, the 1926 contract, was one of the means of the conspiracy and one of the means by which we coerced people to submit to arbitration. It will save the time of the Court and all of us if counsel for the Government is prepared to join in the stipulation or admission that except for the fact that the Committee was not appointed by a convention, as occurred in 1927, that otherwise the same procedure was followed, clause by clause, rule by rule.

The Court: Well, I am not in a position to ask the Government to stipulate anything. I take it the purpose of what you are doing is to show that these subsequent negotiations were very largely—or that they did very largely result in changes favorable to the exhibitors and the agreements were openly negotiated and openly arrived at.

Mr. Grosvenor: Yes, they were openly arrived at, that [fol. 430] is, every normal, usual contract, was entered into, and they were all legitimate contracts, and——

The Court: They may or may not be that. That is another question, but at least, assume apparently there was no oppression as between the two groups of exhibitors and distributors exercised. I suppose the Government will concede that with regard to the 1928 contract or 1926 contract.

Mr. Thompson: I am afraid the Government could not concede all of the statements that Mr. Grosvenor has made.

The Court: Is there any suggestion you may have, whereby you might make a concession, which will shorten it. If not, I am afraid we will have to go through with it, unless you have something to suggest.

Mr. Thompson: It seems to me the evidence so far, covering the way in which these contracts were arrived at, has been very full and I do not see that taking them up article by article, would add anything.

The Court: I think, Mr. Grosvenor, you will not have to go into such detail; Mr. Hess is a competent lawyer and can tell his story briefly and state all the negotiations; the Government does not object to that form of testimony and that will save some time.

Mr. Thompson: No, your Honor, I have not any objection [fol. 431] to that. I say there have been these agreements that they have gone into, and the Government does not dispute that they were signed.

Mr. Grosvenor: I will not go into it with such detail if the Government does not object.

The Court: Go ahead.

The Witness: The Uniform Exhibition Contract, which appears on page 52 of the petition was changed by the 1926 contract in the following respects:

The warranty as to numbered articles was inserted.

There was no warranty in the Uniform Contract.

Paragraph first provided for the term within which peiod or within which the exhibitor, I mean, was to exhibit pictures during the year, commencing with a date not specified, to conform to the exhibitor's year, and it fixed a definite time, measured by the date of the first exhibition or the first picture that was delivered.

That part of paragraph 1st beginning with the words, "the exhibitor agrees to pay for such license," was made paragraph 4 of the 1926 contract.

The last paragraph of the first clause was omitted at the exhibitor's request.

The second paragraph was made the first paragraph of Article 10 of the Standard Contract. I am talking now of the Uniform Contract all the way through; the 1923 contract.

The third paragraph, which provided for six cents dam-[fol. 432] ages for each linear foot of lost stolen or destroyed film was reduced to four cents, and to laboratory cost for colored prints.

That part of the third paragraph which begins with the sentence, "such payment, however, shall not transfer title," down to the end, was made the 11th paragraph of the Standard Exhibition Contract, with the addition that, if the exhibitor paid for the lost or stolen prints and it was returned to the distributor within thirty days, the time was extended to sixty days.

Then instead of requiring the exhibitor to notify the distributor of a damaged print upon its receipt, on the day of the receipt, he was given until a time prior to the second public exhibition of it by the exhibitor.

The 4th paragraph was made the 3rd of the Standard Exhibition Contract of 1926.

The 5th beginning with the sentence, "but the distributor shall not be liable," down to the end of the paragraph, was taken out of that and inserted in paragraph 18 with like provisions, excusing the faults and delays on the part of the exhibitor.

The first part of the 5th paragraph remained.

The Court: Mr. Grosvenor, I should think this sort of analysis is perfectly simple to insert in your brief. I thought Mr. Hess could give us the idea of what the funda-[fol. 433] mental changes were on the balance of it.

Mr. Grosvenor: Suppose you do that. What the exhibitors had in mind and what the distributors had in mind.

The Witness: The exhibitors had in mind in this 5th paragraph that the exhibitor should be relieved of delays

or failures of performance for the reasons that the distributor was relieved of such delays or failure of performance, and the distributors ageed to it and the provision was made to that effect.

Now, paragraph 9, relating to selection and designation of play dates, that is all new, that is new and an elaborate system that took months and months to work out, of fixing the play dates, when they are not agreed upon at the time the contract is executed.

The whole of the 7th paragraph, with the exception of the last sentence was omitted at the exhibitor's request. That was the paragraph that caused much complaint on the part of the exhibitors. The provision in article 11 of the Uniform Contract which limited the assignment of contracts by an exhibitor without the consent of the distributor to contract for less than a year was stricken out.

Page 73 of the petition, clause, 14, Standard Contract, the last two paragraphs on that page, under exhibition and advertising, are not new. They were amplified. They [fol. 434] were in effect in paragraph 12th of the Uniform Contract, but they are considerably amplified. This provision was put in at the request of exhibitors, particularly the larger exhibitors. We had some conferences with the men who represented the first-run pictures. Most of these conferences I have had all through my experience with the contracts have been with the local exhibitor organizations and national exhibitor organizations, that represent the exhibitors who have the runs, with few exceptions, subsequent to the first-runs.

I do not say that they are small theatres, they are as important and some of them are as large as the first-runs, but they represent runs that are subsequent to the first-runs.

There was much complaint on the part of the exhibitors that had first-runs, that the men having subsequent runs, concurrently with the exhibition of the first-run, would advertise, something on the following order: "Do not pay fifty cents for that picture; wait to see it at my house."

They wanted a provision that would prohibit, or attempt to prohibit the subsequent run theatres from advertising that way. That was put in. I think that clause is still in the contract in 1928.

The exhibitors objected very strenuously to the way the [fol. 435] 17th paragraph was drawn, because they said that psychologically it invited salesmen to demand a deposit in advance of the execution of the contract, so that was eliminated and redrawn, to make it as innocuous as possible, as it appears in the 6th paragraph of the 1928 contract; also in the 1926 contract.

The exhibitors, I remember very clearly, insisted that the first sentence of the 18th article, "no promises or representations have been made by either party to the other, except as set forth herein" be set forth in a separate paragraph, and they said it should be printed in italics. They said there were a good many complaints from exhibitors to their local exhibitor organizations about agreements that were made outside of the contract, and they wanted to educate the exhibitors throughout the country to be certain that everything that was agreed upon with the salesmen was specified in the contract, and I think within up to the last year, the exhibitors generally throughout the country, received that education.

The Boards of Arbitration have repeatedly refused to hear evidence of oral agreements, either by the salesman or the branch manager and the exhibitor with respect to pictures that are contracted for. They generally follow that rule.

The 18th paragraph was amplified considerably. There [fol. 436] was a general division of the country into broad zones for the acceptance and rejection of applications and the exhibitors wanted it specific for each trade center and after agreeing on the number of days within which a contract was to be accepted or rejected, that was done.

There were no changes in the arbitration clause requested nor were there any made during all those negotiations.

There was some slight change made because of paragraph numbering, slight changes in phraseology, but in principle there was no change of any kind made in the arbitration clause. The direction to salesmen that was changed, because it was a statement, as it appeared in the uniform contract, and at my suggestion, it was made to read as if it were a direction to salesmen—as if it were addressed to them specifically.

In principle, the rules that were part of the Uniform Contract were very slightly changed—in part they were not changed at all. There were some slight changes and additions made in the rules that were adopted on March 1st—which bear date March 1, 1926 and December 1, 1926.

By the Court: Did the exhibitors ask for any changes which were not made?

A. In the rules?

Q. Yes.

A. I do not want to assume the responsibility after three [fol. 437] years of saying "no," but my impression is that there were none, or very few.

Q. Was there any substantial complaint about arbitration?

A. No, there was no substantial complaint about arbitration. The complaint was confined to the terms of the contract. They claimed that the uniform contract was a compromise as to its terms and should be made more definite. Those things that they asked for—practically all the things that they asked for were granted them on the contract. There was no complaint made about the arbitration system at all or the manner in which it was being conducted.

In answer to questions by Mr. Grosvenor:

I recall, prior to the adoption of the uniform contract in 1923, many difficulties that I had as counsel, for the Goldwyn Company in connection with contracts with exhibitors. Prior to the adoption of the uniform contract, it had been the experience of the company of which I was counsel, that 40 per cent of the contracts taken and entered into and executed by the exhibitors were never complied with.

I remember along about 1920, I think it was 1920 or 1919, one of the executives of the company asked me what I was doing about these contracts that were not being complied with. I said I was following the general policy of practically all the distributors, to do nothing; that it would cost [fol. 438] a tremendous sum of money to retain counsel all over the United States, in small towns, county seats, and big centers, in order to recover damages for breach of contract and many exhibitors sold their theatres, abandoned them; the ownership changed very often. Nevertheless this

man said, "I want you to go after these contracts. This is no business if you make contracts and cannot depend on them."

"So, following his instructions, I commenced a number of actions—a very large number of actions. Several hundred actions. The court of last resort, I think, in the State of Indiana, only the end of last year, finally handed down a decision with respect to one of them, affirming a judgment in favor of the plaintiff. I had to arrange with correspondents throughout the country to retain counsel and I had to educate counsel throughout the country about what a motion picture contract was; I wrote many memoranda on the theory on which the action should be brought; I had to draft and redraft complaints, and after a time I went into this executive and I said, "If you want me to continue this work, I will have to increase my staff." I had two men then assisting me, and finally it was decided to revert to the old policy of having the contracts take care of themselves, and then developed, in 1922, the organization of the Motion Picture Producers and Distributors and beginning of the ne- [fol. 439] gotiations for the new contract.

A very small percentage of the amount sued for was collected under those hundreds of law suits, and a very small percentage of the amount that was recovered by the way of judgments.

It was generally considered in the trade that there were about 15,000 theatres in 1922, prior to the adoption of the uniform contract. That number has grown to anywhere between 20,000 and 25,000.

Q. Did you, as counsel for the Goldwyn Company, have anything to do with suits relating to these advance state deposit statutes that you have been referred to?

A. I participated, with respective counsel of all the other companies, in a suit that was brought in Nebraska to restrain the Attorney-General and state officials from enforcing the provisions of that act, in an action for a preliminary injunction, and we succeeded, on the ground that the act was unconstitutional. That action has not finally been decided; it has not as yet been tried; that was in 1922, but the act is not being enforced.

These statutes generally were statutes which were enacted and they were sponsored by the local exhibitors and they were enacted in five or six states, which required that [fol. 440] any sum received on account of a motion picture contract, by way of security or advance payment, had to be deposited in the state where it was received, and they could not be withdrawn until the contract had been complied with. This subject of advance deposits caused conisderable irritation in the industry, for years before the Uniform Contract. I should say approximately half a million of these Standard Contracts are signed annually.

Cross-examination.

By Mr. Thompson:

The Witness: I should say the Motion picture industry has really been in existence, as an important industry fifteen or twenty years. In the early days, there were a great many irresponsible people in it, in the exhibiting and distributing side.

It is undoubtedly true that conditions have been getting much better and more stable in the industry, ever since it started.

I would not say that has been occurring in the natural course of events, without being attributable to any special causes. I think, as the industry became stabilized, particularly, I think the greatest influence for stabilizing the industry, was the recognition by the bankers of the country of the stability of the industry. I think that the Film Boards of Trade—the establishment of the Film Boards of Trade [fol. 441] has done much to educate the exhibitors and distributors, and has brought about a more cordial relationship between them.

Q. I had reference more particularly to the period before the association and the Film Boards were established, as to whether improvement had not taken place to a considerable extent since the early days.

A. It all depends on what you fix as the early days.

Mr. Thompson:

Q. During the first fifteen years of the industry; there has been a great deal of improvement in the latter part and

undesirable elements have been eliminated on both sides since then, have they not?

A. I can not answer that.

Q. From your general connection with the industry, can you not state whether you observed any improvement in the industry?

A. From the time I was connected with the industry, from 1916, I have observed tremendous advances.

Q. Both before and after the establishment of the Film Boards and Associations?

A. No, since the establishment of the Film Boards and Associations.

Q. Only since then?

A. A marked improvement since then.

These systems which I have been describing were instituted because it was considered in the industry itself, that they demanded them because of exceptional conditions.

[fol. 442] Q. Were those exceptional conditions, to a great degree the dishonesty or irresponsibleness on the part of the people you deal with?

A. I think so, yes; irresponsibility principally.

Recess.

GABRIEL L. HESS resumed:

Cross-examination.

By Mr. Thompson (continued):

The Witness: Before the Film Boards of Trade were organized, and the present Arbitration System put into effect in many of the distribution centers they had what is called the Hoy Reporting System. I knew that system. I knew of it, because it was in operation in New York, I believe it was in operation in three or four other centers. I became connected with the Film Boards of Trade in August, 1924; and I think they were organized early in 1923.

The operation of the present arbitration system had been started before I joined the Association. From my acquaintance with the Hoy System in New York I will outline the general theory and operations of that system.

Under that plan there was either a grievance committee or a committee characterized in some way by a title, of dis-

tributors, on which committee the exhibitors had no representation. When a complaint was made by a distributor [fol. 443] against an exhibitor that he had breached a contract the complaint was heard by this committee of distributors in the F. I. L. M. Club, and whatever the Committee's decision was in respect to that exhibitor it was transmitted to the remaining members of the F. I. L. M. Club. The exhibitor was not given an opportunity to explain; and if they decided that the exhibitor had breached his contract the remaining members of the F. I. L. M. Club, I believe, under their contracts, would demand additional security for the performance of their contracts. That in the main was the system as I knew it. My contract with it was very meager.

My impression is that under that system they demanded security in addition to the deposit that had been made on their contract when the contract was signed.

If such security was not deposited they refused to continue supplying films, I believe. My present recollection is that those F. I. L. M. Clubs only existed in three or four exchange centers.

I think there was one in Chicago, and I believe there was one in Detroit, and I have no recollection of any other. There was one in New York of course. I do know that an attempt was made at one time to organize those Clubs throughout the country, but it never succeeded. It was never carried through, because the counsel for the representative companies who had very little contact at that time [fol. 444] with the operations of their branch offices, several of them felt that that system would be in violation of the law; and while the attempt was made to organize them nationally there were very decided objections to that; and that was about the end of 1921, I believe, or the beginning of 1922, and the whole idea was abandoned when the Motion Picture Producers and Distributors of America was organized early in 1922.

Those Clubs were operating and attempts were being made to extend their operations just prior to the organization of the Association. I believe that was a very important condition in the industry at the time the Association started to function. There were complaints from ex-

hibitors because of the operations of those Clubs. I would not say there were a great many.

With reference to any proposed approval by the Department of Justice of the arbitration system in the motion picture industry in 1926, I was familiar with all the transactions which led up to the sending of those two letters which were introduced in evidence.

The investigation of one or two local Film Boards of Trade had started early in 1925, and we had been advised of the investigation. Along in the fall of 1925 I did have conferences with the Department in reference to the question of whether any action should be started.

I was given an opportunity in order to present my ver- [fol. 445] sion of the facts to review the memoranda that had been prepared by the attorney in charge of the investigation. One of those memoranda recommended the institution of both criminal and civil actions against the members of one local Film Board of Trade. After having an opportunity to review those facts, I prepared briefs outlining my version of the facts. Mr. Grosvenor was with me on those matters. There were various conferences between counsel for the government and Mr. Grosvenor and myself with reference to the facts and with reference to the law. The Department also maintained the position that it was their belief that the system was, in their opinion, not legal.

The two letters which were introduced in evidence were sent out, to my knowledge, because of the decisions reached by the Department, because of practical considerations not to institute a suit at that time.

I represented to the Department that all the practices which had been found to have been carried on by that one local Board, which were in excess of the written rules, would be abandoned, and I issued instructions accordingly, as evidenced by the letters that have been introduced in evidence.

I advised the Department that the secretary who happened to be responsible for those activities had been discharged. The secretary of one other Film Board who had been acting the same way, also was discharged.

[fol. 446] The Department advised me that under those circumstances it would not start an action then, but would allow us to make the changes which have been outlined in

the Rules and Regulations, and then wait to see what the effect in actual operation of the system as changed would be, and that after having had an opportunity to observe that actual operation it would consider the operations of the system as a nationwide thing.

The considerations in 1925 and 1926 had related I know to Cleveland, and there was St. Louis and Cincinnati. Cincinnati, I believe, I am not certain. One or two others are embodied in the so-called report making the recommendation that an action be instituted. I remember Cincinnati was one, because I remember Mr. Grosvenor went out to Cincinnati and we gathered the complete correspondence, and completed the files that the Department had only taken a part of, and used those to answer the claims made in that report.

The Uniform Contract and the Rules of Arbitration were not submitted to the Department before they were put into effect. No changes in the Rules or Contract other than the changes recommended by the Department after the conferences in 1926 were submitted to the Department before being put into effect.

I will specify the provisions in the Uniform Contract and [fol. 447] the two exhibition contracts which give the exhibitor the right to have delivery of the films at a specified time. We will start with the last one. That is the contract of 1926, paragraph eighth provides that the distributor agrees to deliver to the exhibitor during the period specified in Article Second hereof a positive print of each of such photoplays in time for exhibition at the said theatre on the dates specified or on the dates determined as herein provided, making reference to Article Second.

The period referred to is during the year commencing with the date fixed or determined as hereinafter provided for the exhibition in the above-named theatre of the first photo-play deliverable thereunder.

Q. Just a minute please. Before that obligation becomes effective must not certain conditions which are precedent be fulfilled?

A. None other than the delivery of one picture. The year period goes into effect upon the delivery of the first picture by the distributor to the exhibitor, which fixes the exhibitor's year, and within that year the distributor is

obligated under Clause 8 to deliver all the pictures contracted for.

Q. What rule was that you read?

A. It was not a rule. It was Article Eighth of the 1928 [fol. 448] contract—I am quoting the 1926 contract. All that I have testified to refers to the 1926 contract.

Q. Which clause then?

A. In the 1926 contract it is Clause Eighth that I quoted, and Clause 2 that I quoted in the 1926 contract.

I will finish the 1926 contract first (page 67 of the petition).

Q. The agreement to deliver the prints depends, does it not, upon the fixing of the play dates?

A. It depends upon the delivery—the exhibition of the first picture deliverable.

Q. What I am trying to get at is: What right does the exhibitor have to secure definite playing dates for these pictures covered by the contract?

A. He either agrees upon definite play dates at the time the contract is made with the distributor, and they are specified in the schedule; or he agrees to a playing arrangement as to the number of pictures to be played and delivered over the period of a year under the contract of 1926, which was an arrangement that was generally entered into; or if no play date is agreed upon or specified in the contract when it is executed, the distributor is obligated within a reasonable time under the contract after a picture becomes available to give the exhibitor notice of availability.

[fol. 449] The section containing the obligation to give the notice of availability within a reasonable time, is Section 9, Paragraph A of the Contract of 1926; it reads:

"The distributor shall mail the exhibitor at least fifteen days notice in writing of the date upon which each photoplay will be available for exhibition by the exhibitor consistent with prior runs——"

and so forth.

It is my opinion that that provision requires the distributor within a reasonable time after the picture is available to mail the exhibitor a notice to that effect.

There is no express provision in the contract that a notice of availability shall be mailed within a reasonable time. The exhibitor has means within his power of knowing whether a picture is available if he does not receive notice of availability. If it is a subsequent run exhibitor he will know that the picture has been shown in his territory in theatres that have a run prior to his; or if he is a first run exhibitor he will know from the trade papers that the picture is available, because it is announced and advertised. Furthermore, it is perfectly obvious that the distributors are not producing these pictures to keep them on their shelves. They are most anxious to have them played; and most of the complications or the claims against exhibitors by distributors are because the exhibitors will not agree upon play dates.

[fol. 450] As a matter of fact the class of exhibitors that complain that they do not get pictures, or notices of availability of pictures are very few.

The distributor immediately after a picture is available is necessarily anxious to have it shown. It stands to reason that the sooner the picture is exhibited by the exhibitor the quicker the revenue derived from the picture is received by the distributor. There are cases where a distributor having failed to contract for a first run picture, where he has not been able in advance of the season or at some time during the season to make an advantageous contract for a first exhibition of a picture, and having made contracts for subsequent ones, he will probably delay the delivery of the picture to the subsequent runs until he has had an opportunity and can make a contract for the first run, for these reasons:

First, the revenue derived from first runs of pictures at the time of issue is practically fifty per cent of the total revenue that the distributor receives from each of its pictures. I might add to that point that that revenue which the distributor receives within the first twelve weeks of the life of the picture, the first three months of the life of the picture from the date of its availability for first run, that fifty per cent of the revenue is received from the date of its first availability. Therefore, it is essential and im-

[fol. 451] portant to the distributor to contract for his second run as soon as possible after he has contracted for his first run. I would say today that first runs are contracted for long in advance of second runs, but there are localities scattered throughout the United States where some distributors have difficulty in contracting for their first runs naturally.

By the Court:

Q. What do you mean, some exhibitors?

A. No, distributors. It is difficult for the distributors to contract for their first runs. Where the theatres in the town are controlled by one man, and distributor and exhibitor simply can not get together on prices, or the distributor can not even interest him in the first run of the pictures that they have that have not been contracted for for first runs.

Then continuing that which you pointed out, or concerning which you asked me, I pass only those we have of least importance—I do not mean importance except as to size—least importance of the distributors' pictures.

The exhibitor who has a subsequent run has a remedy under this contract if he does not get his picture. After he has made repeated demands upon the distributor for the picture and the distributor does not give him notice of availability or make the picture available that gives him [fol. 452] a right to a claim under this contract. He can go before the Board of Arbitration with that claim and the Board of Arbitration will direct and order by their award the distributor to deliver the picture to the subsequent run exhibitor notwithstanding the fact that the distributor has not secured a contract for the first run of the picture.

In answer to questions by Mr. Thompson:

X Q. But the right to do that, you say, depends upon an implied statement to give the notice of availability within a reasonable time. A. No, I would not say that, Mr. Thompson. I say there is an implied agreement from the language of the contract itself to give a notice of availablity within

a reasonable time after the picture is available for the right to claim that the picture is available which the exhibitor has, based upon his knowledge that the picture has been shown in his territory and in other towns near him or in other cities. That is what I mean by the right to make a claim on the distributor to deliver the picture to him; and if the distributor refuses it gives rise to a claim which may be presented, and has from time to time been presented to the Board of Arbitration, and they have ordered the distributor to deliver the picture to the exhibitor; putting the exhibitor in the position of having contracted for a second or subsequent run of the picture preceding the first run of the picture in that locality.

[fol. 453] Q. Except for the provision you have pointed out there is no agreement in the contract with reference to that, is there?

A. I have pointed out, Mr. Thompson, that the distributor is obligated to deliver the pictures within a period of time, and I have pointed out——

Q. Just what is that?

The Court: A reasonable time.

The Witness: With reference to the 1926 contract Article Eight requires the distributor to deliver during the period specified in Article 2; and Article 2 specifies a period of one year. That year is fixed at the beginning by the date of exhibition of the first picture delivered to the exhibitor. Furthermore, under A of Article 9 the distributor shall mail the exhibitor, and it is an obligation on the part of the distributor—not that he may mail—he shall mail the exhibitor at least fifteen days' notice in writing of the date on which each photoplay shall be available; and it is my opinion that there is clearly an implied obligation under that provision requiring the distributor within a reasonable time after the picture is available to deliver it.

By the Court:

Q. To send the notice of availability to the exhibitor?

A. To send the notice of availablity to the exhibitor.

Q. Is not there perhaps an express obligation to send him a notice fifteen days before it is available?

[fol. 454] A. The point that Mr. Thompson makes, your Honor, is that there is no obligation on the part of the dis-

tributor to send any notice of availability; and my analysis [fol. 455] of the contract is that when the picture is available there is an obligation within a reasonable time after that event takes place to send the notice. The fifteen days notice in writing must be fifteen days in advance of the time that is fixed in the notice of availability.

If, for example, a distributor finds that a picture is available to the exhibitor on March 15th, he must send that notice to the exhibitor on March 1st. The exhibitor then has fifteen days notice; and without following through the balance of the clauses within fourteen days after the mailing of the notice he may select a date, and then the procedure is followed as provided in that clause.

In answer to questions by Mr. Thompson:

The elements on which availability depend are the possession of the print of the picture; when the prints of the picture are distributed or shipped from the laboratories to the exchanges, they are then available for exhibition.

There are other factors that enter into the availability of any specific picture, or any specific feature, that is, the run that the theatre has contracted for; the protection that other theatres have received; and the protection that the specific theatre has contracted for. One other element is the possible success of the picture. The picture may be contracted for for one week, let us say in St. Louis, and the picture is so successful, that the first run holds it over [fol. 456] for four weeks. Naturally the availability of that picture for the subsequent exhibitors is delayed that additional three weeks period of time. But we never hear of any complaints by subsequent run exhibitors, when the picture is held over by the first run, because it means that much more value to the box office for the subsequent exhibitors.

At the Chicago meetings of the Contract Committee, an official record in the shape of minutes was kept.

That gives the substance of everything that was proposed. Every proposal was reduced to writing and all of those writings were taken together as the official record of the meeting.

Such official minutes or records were not kept of all the meetings of the Contract Committee, and all the negotia-

tions of the committees because the negotiations were with many, many different persons.

As I said this morning, I happen to be the one person who was present at all meetings either of exhibitors or distributors, but as I explained, I went to Detroit and went over the provisions of the 1926 contract with Mr. Richey, who made some suggestions and I brought them back to New York; went over them with Mr. Seider; had several meetings with distributors, I think there were twenty-five [fol. 457] different galley proofs made of this 1926 contract before it was finally agreed upon, and then at the Union League Club meeting—while the distributors were over at the Association offices, the exhibitors were at the Union League Club, and each clause was taken up, one after the other, and changes that were made then were telephoned over to the distributors at the Association office, and they either agreed or made counter-suggestions until finally the galley proof came back marked up and changed.

At the end of the meeting, the distributors at 469 Fifth Avenue had agreed with the exhibitors who were at the Union League Club, two blocks away.

Mr. Thompson: That is all.

Redirect examination

By Mr. Grosvenor:

The Witness: The Hoy reporter system that was referred to did not have any part at all in this arbitration system. It was abandoned by all the distributors at the end of 1921 and beginning of 1922.

R. D. Q. You were asked on cross examination about the Department of Justice investigation; did you talk with the Department about the statement that the Department was to make in regard to this investigation? A. I think we talked of the statement that the Department would issue.

R. D. Q. Did the government counsel who were conducting the investigation, and referred to on cross examination, report to you that in their opinion, the plan as conceived [fol. 458] and executed, provided a fair, just and economical method of dealing with disputes? A. Yes, but with the reservation made by Mr. Thompson, as he indicated in his cross examination.

[fol. 459] SIDNEY R. KENT, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination

By Mr. Grosvenor:

My business is general manager of Paramount Famous Players-Lasky Corporation. I have been in the motion picture business since 1917. I started as salesman for Famous Players. Then I was branch manager and district manager; I was made sales manager and general manager of distribution and general manager of the company. As general manager of the company, my special duties are to handle all sales, and matters of income. We serve an average of 9,000 to 10,000 exhibitors in the United States. We have forty-five branches in the United States and Canada and 117 abroad. These are in the principal distribution centers of the United States.

I was general manager of distribution in 1922 and 1923. I took part in 1922 or 1923 in preparing the Uniform Contract. I was on the original committee representing the distributors. Mr. Kirchwey and Sol Rogers of Fox and myself were the original committee that represented the distributors. Mr. Karl Kirchwey was connected with Selznick-Select. The committee of exhibitors we conferred with on this contract was a committee appointed by the National Exhibitors body, which was the Independent Motion Picture Owners of America, Mr. Sidney Cohen, president at that [fol. 460] time appointed this committee. There was a committee there from the Theatre Owners Chamber of Commerce, which was the New York body of exhibitors and the Association on the other side. These meetings lasted from the time we started until we finished, I think close to seven or eight months. The negotiations were going on continuously. We started, I think, in the fall of 1922. Senator Walker, now Mayor Walker and his partner, Mr. Warren were the counsel on the other side. We had a number of attorneys on our side, in addition to Mr Kirchwey and Mr. Rogers and we worked on it pretty constantly, sessions lasting for a solid week, then we would break up and go out and then get at it again; at the end

of seven or eight months, in the spring of 1923, we came out with the first Uniform Contract. When I say "we," I mean the three committees that were in session. The national organization, the local theatre owners of New York and the distributors agreed upon a Uniform Contract, the first one for the industry. The object in getting a uniform—or in trying to establish a uniform contract—was that prior to 1922, there had been a growing feeling in all branches of the trade that a general get-together meeting should be had to do away with some questions that were matters of honest dispute and difference of opinion, and second, to abolish some trade practices which were objectionable from both sides, trade practices on both [fol. 461] sides. The chief objections by the exhibitors was first, the advance deposit system, which we had ever since we have been in business, and the lack of a uniform contract, that is, the system described here, where each distributor had his own contract with different clauses and different conditions. Those were the two things that were the big objections from the other standpoint. The Paramount or Famous Players as it was known then was demanding advance deposits on all its contracts, running from five per cent on the face of the contract up to twenty-five per cent. We had at one time about $1,200,000 of advance deposits. We do not demand advance deposits now.

The distributors complained of a rather general disregard of contract obligations on the part of, not all exhibitors, but a large percentage of exhibitors, bicycling of our film, lack of attention to the film with the exhibitor, as a result of which, in many cases damages occurred; the lack of play dates, giving the play dates after the contract was signed. From the distributor's point of view, the fixing of play dates is the entire thing. I think all of the rest of it is simply a minor matter in comparison. The matter of fixing play dates, that is being fixed under the Uniform Contract is of much more convenience to the exhibitors than it is to us, although that is the only way that we can [fol. 462] liquidate our contracts, by giving play dates. We could fix arbitrary play dates, but it would be bad for the exhibitor if we did, because it would be almost impossible for him to handle his show so as to get the most out of his

picture and the practical working of it would be very unsatisfactory, and proved so when tried in many instances.

The advantages of arbitration in the industry are, in my opinion, the speedy settlement of any question arising on either side. Speed is very essential in our business. Second having a fair court, where there is a certainty of the parties to the contract getting equitable adjustments. I think it has built up a lot of good will in addition.

The value to the film industry of prompt decisions on questions of disputes relating to pictures in my opinion is based on the fact that in our business the price of film is more or less based on age. It is very hard to sell an old picture. The demand is for pictures that are new. As soon as a picture hits the market, that is the trade expression, as soon as it has its first run, each day of its run depreciates in value. The necessity for getting that picture in while the public interest is alive and at fever heat, is very real, both to ourselves and to the exhibitor. An old picture is very hard to produce, satisfactory returns, after the exhibitor, after the first exhibitor has it, I mean to [fol. 463] get satisfactory returns, so there is the necessity of playing the picture as quickly as possible and that is the real life of the business. We have to get it to the public while the public is in a receptive mood. We have styles in pictures the same as you have styles in clothes or anything else. When western pictures are in vogue, which happened right after the "Covered Wagon" was put out,—everything after that was western pictures and everybody wanted to get it. That we had a large run on war pictures after the "Big Parade;" everybody then wanted war pictures. Everything changes. Now it is sound pictures, talking pictures and everybody wants quick dates on those. Unless you have machinery for affording that, for bringing it about, a distributor obstructs the pathway, not only for a great many pictures to follow, but works an imposition on his competitors unless there are cleared dates to get them through.

I can illustrate that by rentals, for instance, between first runs and subsequent runs. You start a first run picture in New York City, on Broadway; the picture plays in a long run house like the Rialto or Rivoli, where it may run for

twelve, fourteen or fifteen weeks, then it has a run at the Paramount, Roxy or Capitol for one week; those are first run houses, they are big houses that charge high admissions [fol. 464] and they give additional stage shows, vaudeville and orchestral numbers to embellish their shows. They pay for their pictures $5,000 to as high as $125,000 for a run and charge as high as $1.00 admission. After they are finished with the picture, there is a pause, or what we call a protection period for about two weeks, and then they go on the circuit of independent exhibitors. He has an entirely different show, perhaps; perhaps not as much vaudeville, if any on his stage, but just runs a picture. He will pay a sum that is only a small percentage of what the first run exhibitor paid. In addition, he gets the lower admission price, and the film is really the backbone of his show. He does not depend on anything else. When he finishes with it, it goes a week later or two weeks later, whatever the protection may be, to a third run customer. The third run takes it and he shows it at a very little admission, maybe twenty-cents at this time, where the first one charged a dollar or ninety cents; general admission fifty cents; the third run man charges twenty-five cents. He probably just shows the picture and some short subjects. Then it leaves him and get down to the last, until twelve or fourteen runs have been had of the picture. The last run will be paying, it might be ten cents—ten or fifteen cents. The last run might pay $10 or $15, or as low as $7.50 for rental of the picture, for a picture that the others paid as high as $5,000 for a run on Broadway. All these runs will occur within [fol. 465] a period of nine months or a year. The necessity for the clearing of that is this: For the second run, if there are fifteen runs, such as in a city like New York, and the second run man has a dispute with the distributor of the picture, unless that is immediately adjudicated, he holds up that picture for all the subsequent runs, who are innocent parties to the dispute, and they may be affected by the fact that this is not cleaned up, because these protections clauses appear in these contracts, and the fact that you might not make delivery on the picture until a decision was reached. I would say we make in excess of 125,000 contracts a year. We have a great many contracts with

just one picture; some two or three, some to whom we sell the entire output of sixty or seventy pictures; some twenty, some maybe contracts to supply ten or twelve pictures.

The purpose of my company in joining in on this arbitration plan was because we believed it was good for the industry; we believed it was economically sound, reducing losses on both sides; we believed it cured a great deal of the bad blood that existed prior to that time between exhibitors on the one hand and distributors on the other. I think that it has had that effect. I think the conditions are a hundred times better, at least a hundred times better than before we put it into effect with the general run of exhibitors, and [fol. 466] certainly with the distributors. The difficulties of replacing or salvaging a contract when it is broken by the exhibitor having the contract are if I contract with A for a series of pictures or a picture, and he does not live up to his contract, and if there are two additional or one additional exhibitor in a town, it is common knowledge that I failed to get my picture played by A, that is in turn, taken advantage of by B and C, both, when I go to them. There is a natural psychology there.

In considering good credit or giving any account to the exhibitor, the facts peculiar to motion pictures, which enter into the situation are financial responsibility, only up to a certain point; moral responsibility more than anything else; we are principally concerned with whether a man will play the pictures after he has contracted for them. That is much more important than perhaps you would think. The fact that in the process of arbitration, you collect money from the exhibitor, does not mean that the contract has been fulfilled. We live on circulation just like a magazine and we can only build up stars and directors and personalities in this industry by getting them before the greatest number of people. We live on that. We do not sell our pictures just to get the money for them, and not have them played; we want them shown on the screens. If they are shown, we get our money, but the important thing is that the picture be shown and brought before the public; that is the reason we produced it. The losses today on contracts compare [fol. 467] with losses prior to 1922. I think they are very much less. I know they are. I can not speak for the others,

but I know that our losses are only a small part of what they were. The petition charges that the defendants, of which the Paramount Company is one, have entered into a conspiracy and are engaged in a conspiracy to coerce and require every exhibitor——

The Court: Can we not shorten it by stipulating that this witness will testify to the same effect as the others on that.

Mr. Grosvenor: And that all of the defendants we call will so testify?

Mr. Thompson: As to the conspiracy charge, I will agree that they will all testify as the others did.

Mr. Grosvenor: That is all.

Cross-examination.

By Mr. Thompson:

X Q. What are the types of disputes which counsel referred to, which you might have with the second run theatres, which, if not settled promptly would cause delay and trouble with the later runs?

A. The chief dispute is not taking the picture when it is available for them, in getting the playing dates, that is the most important to us. I can not tell what the others are.

X Q. After the provisions of the contract have been fol- [fol. 468] lowed and the playing date has been set arbitrarily, the picture is available and can be furnished to later runs, can it not?

A. Yes, after each succeeding run plays the picture and the protection is lived up to, we can then give it to the next run.

I would estimate that 75 per cent of the first run houses are operated by the ten or twelve national or regional chain operators. The majority of those shows are affiliated with producers or distributors. We have a number of big shows in the country that are not affiliated with anybody. Reuben & Finkelstein in Minneapolis; the Saenger people in New Orleans, outside of one theatre, have no affiliations; Schine Circuit have a small affiliation with Universal; there is a large circuit in New England, I forget the name of it, about fifty some houses that has no affiliation. There are number of them, the Libson Circuit in Cincinnati has no affiliation

with anybody; there are a number of circuits consisting of six, eight or ten houses that have no affiliations.

X Q. So far as Finkelstein & Reuben are concerned, are not all the first run houses in Minneapolis and St. Paul operated by companies in which they get a half interest?

A. They have an affiliation with a house of ours that has nothing to do with the circuit of their own, that is owned by them. They have an operating pool, to pool the profits of first run theatres.

[fol. 469] Felix F. Feist, called as a witness on behalf of the defendants, having duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am general manager of sales and distribution of Metro-Goldwyn-Mayer. I have been in the motion picture business since 1912. The branches of the business my experience has covered are sales and distribution. I have been with the following companies: Kinomacolor of America, world Film Corporation, Goldwyn Distributing Corporation, Joseph N. Schenck Productions and Metro-Goldwyn-Mayer. I am the Mr. Feist that has been mentioned in Mr. Hess' testimony as being on the Contract Committee appointed at the Federal Trade Practice Conference. I attended those conferences in Chicago. I was there throughout the conferences. I heard Mr. Hess' testimony on Thursday and Friday. I was not here this morning. His statements about those conferences as given on Thursday and Friday very definitely accorded with my recollection. I will read, after the minutes are written up, his today's account of the balance of that conference. I will briefly state it from my own point of view, what the conditions were in the industry in 1922, leading up to the Uniform Contract. I should say that out of probably 6,000 contracts at that time, that the large national distributors had, that there were not more than [fol. 470] 20 per cent that the distributor himself considered valid. For the most part, the condition that existed was such that we sometimes doubted when we shipped a film or print, I refer to, whether we would get it back or not. In fact, in my own experience, in certain territories

of the United States of America, we had great difficulty in getting our prints back; the exhibitor, as a whole, in those days was not a trustworthy individual. I remember the cry that was brought out by the legitimate exhibitors of the United States of America, at least those with whom I came in contact, that they were being penalized in getting credit because of the great rank and file of the unscrupulous ones.

It is my opinion that the Uniform Contract and the Arbitration Board did for the unscrupulous man more than it did for anyone else in the motion picture industry. Instead of the minority being respected with the advent of the Uniform Contract and the arbitration, the great majority were respected. The reason I mention that is because there was a lull, there was a gap between the years that I left the Goldwyn Company and the time that I became affiliated with Metro-Goldwyn Company, when I was away from active distribution. During that time I represented Norma Talmadge, Constance Talmadge, Lillian Gish, Richard Barthelmess, Buster Keaton, in a sales supervision capacity, the pictures being distributed by First National. That is the reason that I was not active perhaps in the [fol. 471] meetings that took place when these Standard Uniform Contracts were devised, and as I have often expressed, when I came back to active distribution, and got back on the firing line, and found this condition, it was heaven. By that I mean the exhibitors in the United States of America, by this thing had been lifted up to a plane that I had never thought possible. The ethics of the business had been improved to such an extent.

Q. Will you point out very briefly, as the matter has been referred to, but from your own point of view, as a practical man in the business, the reasons that make it necessary in the motion picture business that there be quickness of decision.

The Court: I think that is quite obvious.

Mr. Grosvenor: I think he might have something fresh on that point, but if you think it has been fully covered——

The Court: You can call him again if the government brings out something, but the question has been covered and it is quite obvious.

By Mr. Grosvenor:

Q. Is competition active in the industry, in the distribution end?

A. I should say it is. It has never been anything else but highly competitive since I have been connected with it.

Q. And it has been highly competitive throughout this period when Uniform Contract has been in force?

[fol. 472] A. So far as I know, yes, sir.

Cross-examination.

By Mr. Thompson:

X Q. Did you find it necessary to have the agreements that are set forth in the Rules for Arbitration, to prevent your salesmen from taking contracts from exhibitors that had not satisfied the awards?

A. Give me that again, please.

X Q. You made reference to the keenness of competition; for that reason, is it necessary for you to have these agreements set forth in the Rules for Arbitration, in order to prevent your salesmen from dealing with these exhibitors against whom there are unsatisfied awards?

A. From a practical business point of view, you do not want to entrust your product to man, who you know, in advance is not responsible for the carrying out of a contract. My opinion is, after you get away from your first and second runs, it is strictly a business proposition. And we are altogether too lenient with the physical property we entrust these men with.

X Q. I do not think you quite understand my question.

A. Probably not.

X Q. Would you read that again.

(X Q repeated.)

A. Will you ask it in another way, please? I still do not understand it.

X Q. Under the arbitration systems that have this [fol. 473] method of making awards, then if a man does not satisfy the award, and if he does not deposit the security, and service is suspended—I wondered whether in your opinion and experience it is necessary to have these agreements not to do what the rules prohibit, under those circumstances.

Mr. Grosvenor: There is not any evidence of any agreement in cases of the rules prohibiting something; you are assuming something in your question, that is not in evidence.

The Witness: As a practical matter, if we have no contract with that man and he is before the Arbitration Board, and the award is held against him, if we have no contract with him and we have not sold our product, I guarantee anyone as many salesmen as there are will go in and that they will get the account.

XQ. Do you allow them to make a contract with that man?

A. I certainly would. And we would close a contract with him at the time there is an award against him.

X Q. Then that does not, in your opinion, impair his credit?

A. If we believe the account is a live one and a good one, and perhaps have dealt with him a season or two before, and for some reason lost our place with him this year,—we have dealings with many of these accounts, many and many years, but for one reason or another they change their distributor.

[fol. 474] X Q. You do not understand; I am trying to get your reaction to it. You say then a man who has an unsatisfied award against him, in your opinion does not necessarily impair his credit?

The Court: Are you trying a credit case now or an arbitration case?

Mr. Thompson: I think the credit argument was used in this case, your Honor.

The Court: What is the bearing of it?

Mr. Thompson: I do not know. I understand that was one of the things that was set up in the answer, although I may be in error about that.

The Witness: We would not be maintaining these organizations at an expense of $30,000 to $75,000 a week to get this business, if we did not have to and subsequently not serve it.

X Q. In your opinion, what are the classes of disputes which require quick determination?

A. Chiefly the playing time, play dates. Features have got to get under way, Mr. Thompson, you can not hold them up.

X Q. And also fixing the play dates on the second run so that the later runs will not be held up?

A. Yes, as a matter of fract, most complaints I heard of emanated from the exhibitors who are behind in their account and who are reluctant about giving you a date.

[fol. 475] KARL W. KIRCHWEY, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I was, in 1922 and 1923, the Karl Kirchwey referred to in the testimony of Mr. Kent, as having been on the subcommittee in connection with the Uniform Contract. At that time, I was counsel for the Select Pictures Corporation and the Selznick Pictures Corporation, controlled by Louis J. Selznick, and I was engaged as special counsel for the distributors in connection with these negotiations for a Uniform Contract, and it was in that capacity that I attended the meetings of that Committee. I have had an opportunity to refresh my recollection after referring to some of the documents, in a general way. These negotiations or conferences began, as I recall, in the summer of 1922. I think there was a big luncheon, attended by exhibitors from all over the country and by representatives of the leading distributors, and addressed by General Hays, at which there was discussion of the various matters in the industry which needed ironing out, from the viewpoint of individual exhibitors and distributors, and a Uniform Contract was one of them. That, I think, was the beginning of the negotiations. I devoted a great deal of time to this matter for the next seven or eight months, day in and day out on it, of course. I was carrying on my other [fol. 476] law practice at the same time, but this, I should say, was my main job for a period of a good many months until, I should say, about February, 1923, which was the

time when the contract was finally agreed upon, as between the National Association, that is, the Hays organization and the New York Exhibitors, the Theatre Owners Chamber of Commerce, and then some time after that, there was also the working out of details. As I recall it, according to my memorandum, it would appear that there was a sort of formal ratification of the contract, as between the distributors organization and the New York Theatre Owners on or about February 2nd, 1923. That is my best recollection. I recall some of the exhibitors who were present. I think Mr. Edelhertz was present, Mr. Brecher and I think probably Mr. McCarthy and my recollection is that Honorable James J. Walker, who was counsel for that body, was also present at that time.

I might say that meeting, of course, had been preceded by numerous sessions at which the contract had been gone over in detail, clause by clause, and item by item, so that really was the consummation of a whole series of conferences. Drafts of the contract were made over this period. I do not recall how many; but I know there were a great many. The contract, as a whole, the individual clauses of the contract, and there was a matter of continual negotiations of give and take. I remember meeting Mr. Steffes, a prominent exhibitor in the northwest. I made a report for [fol. 477] the law committee in March, 1923, in regard to the activities of the law committee on these matters. I have that report or a copy of it. I think it is in one of my papers. This is the report. I have been over it in the last few days. As part of this Uniform Contract, I devoted a good deal of time to the Arbitration Clause. Throughout all of these negotiations, I might say that I was usually the person who made the initial draft of any clause, and then would submit it to the counsel of the various distributor companies and then when they had agreed upon it or approved it, to the representatives of exhibitors. I dare say in that way, I probably prepared the initial drafts of the Arbitration Clauses. There were many counsel engaged in this matter, representing the various companies. Each company had counsel on the Law Committee and I might say that each counsel has his own ideas. I recall drafting and redrafting the Arbitration Clause a great many times, and the By-

Laws of the Film Boards, as they were then called, and later became changed in name only, to the Rules of Arbitration. That was after the Arbitration Clause was pretty well drafted. I might say, at a certain point in these negotions, the distributors felt that it was desirable to seek the advice of counsel on the Arbitration Clause, who could aid them in drafting the clause which would not offend against the Anti-Trust Laws, and it was in that connection that you, [fol. 478] Mr. Grosvenor, were retained and I consulted with you on numerous occasions in the preparation of these Arbitration Clauses. I remember that you and I had numerous discussions as to the amount of maximum security that should be fixed there. You were of the opinion and so stated, that the amount should be fixed, and it should be a reasonable maximum to meet the exigencies of the situation, and not be in any sense a penalty, but would afford a reasonable security to the distributor in normal conditions.

I remember we considered the average value of the prints and considered the fact that to continue the contract with this exhibitor who had shown himself regardless of his contract obligations, the distributor can not be in a position of entrusting this valuable property to the exhibitor, and we considered that the print of a feature picture ran anywhere from 6000 to 8000 feet in length and that that print was worth—the mere replacement value of it was upwards of 4 to 6 cents a foot, regardless of the damage that the exhibitor might do through the wrongful use of that print, so we considered that the taking into account of the value of the property in his hands,—$500 would be a very modest maximum to fix, bearing in mind also that that was the maximum beyond which no distributor could go, no matter what the exigencies of the situation might be. That was [fol. 479] the maximum beyond which the Board of Arbitration could not go. That was the limit of the Board of Arbitration's power.

Q. What further limit was there on the distributor's power under the rules, or by-laws, do you recall that? Have you refreshed your recollection by looking at the Rules and By-Laws?

A. Yes, I have.

Q. Rule IV, is it not?

Mr. Grosvenor: Your Honor, it is Article 4, as it was known, page 112, Clause 3—no, wait a minute—"limitation on the board of arbitration."

The Witness: That is in No. 1 of that Article.

Mr. Grosvenor: Yes, page 109, is the limitation on the Board of Arbitration; Article 2, I should say under "Powers of Board of Arbitration."

The Witness: It also appears in Paragraph 1 of Article 4, I think, Mr. Grosvenor. Under Paragraph 1, Article 4, the Board of Arbitration could fix a maximum amount, not exceeding that specified in the Arbitration Clause of the contract, that is, not exceeding the $500.

Q. That is the Board of Arbitration is limited by the contract to $500?

A. Yes.

There is a further limitation on the distributor. The distributor may fix an amount for itself, not exceeding the amount fixed by the Board of Arbitration. The amount fixed by the distributor to be such amount as, in the judg- [fol. 480] ment of the distributor will be sufficient to protect the distributor in the performance of the contract, which it has with the exhibitor. In other words, the distributor member may go as low in fixing its security as it pleases, but it may not go above the figure fixed by the Board of Arbitration. The Board of Arbitration may go as low as it pleases but may not go above the $500 fixed by the contract. I did have knowledge of the Hoy Report System in a general way. I do not recall it in detail. I recall this, that there was a system to go in force in New York and certain other localities by a man named Hoy, which was a means devised by him for enforcing contracts with exhibitors, which contained many drastic features which I know caused a good deal of ill-feeling among the exhibitors in certain localities where it was in force, and it seemed to us, of doubtful value.

My recollection is that it involved an iron-clad agreement between the distributor member of the local F. I. L. M. Club, and their demanding high security or cutting off the service [fol. 481] from the exhibitor who had failed to live up to the contract, and also contained, as I recall it, the so-called Arbitration Clause, which was a very one-sided arbitration.

It was really hailing the exhibitor before the local F. I. L. M. Club and putting him on the carpet, so that it was a situation where the distributor members of the Club were judge, jury and prosecuting attorney as well.

Cross-examination.

By Mr. Thompson:

I could not state that from recollection in how many instances that Hoy System was operated.

[fol. 482] CHARLES C. PETTIJOHN, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination

By Mr. Grosvenor:

I am a lawyer. I am general counsel for the Motion Picture Producers and Distributors of America and the Film Boards of Trade. I have been connected with the Film Boards of Trade since the beginning, 1923. The Motion Picture Producers and Distributors of America, Inc. started on the 5th day of March, 1922, and I think I started on March 6th or 7th, just two days after Mr. Hays started.

After this Uniform Contract had been approved, and these Rules of Arbitration, I was assigned a task in connection with this Arbitration Plan, namely to attempt to visit each of the principal exchanges, that is the exchange centers, where the establishment of these Film Boards of Trade and Arbitration Boards were to be established; to meet with the branch managers who were the members of the various Film Boards of Trade, contemplated, and in existence in other places and to meet with the theatre owners and theatre owners representatives or officials in these respective distributing centers, and attempt to work out with them the practical setting up of these Film Boards of Trade, Arbitration Boards and provide for their functioning under a formula that had been suggested. I had certain instruc-

tions to carry out in setting up those Boards. These are [fol. 483] the instructions. This is the plan I followed.

(Defendants' Exhibit H-1.)

As I recall, I made three trips from New York, starting, I think it was March, 1923, for the purpose of setting up the Film Boards of Trade. I think I went to Albany first; Cleveland, Detroit, Chicago, Milwaukee, Minneapolis; then as I recall, I came back to St. Louis, Omaha, Kansas City—St. Louis, Kansas City, Omaha; then Denver, Salt Lake City, Los Angeles. There was about a week's lapse of time there. Then San Francisco, Portland, Seattle, Butte, Montana, into Chicago again; Indianapolis; Cincinnati; Pittsburgh; Philadelphia and New York. During that time Mr. Lloyd Willis covered the Southern group through Charlotte, New Orleans, Memphis, Oklahoma City, Dallas. On my return I went to New Haven and Boston. I think that covered, unless I missed a city, the 32 Boards.

Starting with the first place I have named, this is just what I did in Albany. I met with the members of a proposed Film Board, or Film Club organization in Albany. That is the branch managers of some of the distributors, they were not all in. Even all of the national distributors did not come into these Boards until probably a year later. The original distributors were not in in many of the exchange centers at the beginning; and those that had been interested in the plan and local distributors in that center [fol. 484] met and I went over the situation with them and explained what it was proposed to do; and then met with theatre owners or exhibitors, as they are referred to here, and took the same subject matter up with them, and then we would meet together. After going over some of the practical things that were necessary to set up these operations we would discuss them together and get the various view points. It was contemplated at the beginning that the exhibitor arbitrators in each of these various distributing centers might be appointed from New York City. It was suggested and discussed. Both plans had been discussed. I was instructed to ascertain the desires of the theatre owners on that subject and it was unanimous everywhere except New York City that they wanted the local people, and the local exhibitors' organization wanted to appoint their own

arbitration members; and not have them appointed in New York City. I so reported on my return.

The question came up as to who would be the secretary of these arbitration boards in these various points. Some of the exchange centers were small. The system in New York City was, as proposed, rather elaborate; and they did not have and could not afford such an elaborate set up in many of the exchange centers. Some of the Boards felt that they ought to meet once a month and others thought they ought to meet once every six weeks and some every two weeks and some of the larger centers every week they thought [fol. 485] would be necessary. We ascertained those facts in order that we might know just how this work might be practically set up.

In the discussion of the Film Board secretary, a suggestion was made that the secretary of the Film Board of Trade could serve as the secretary of the Arbitration Boards. In a few of the exchange centers there was objection to that. Those objections were based upon the fact that the exhibitors did not like the then personnel or secretary, in some places. Many of these secretaries were young lawyers in these cities, who only gave a portion of their time. It was not a full time job for them; and a great many of the secretaries, quite a few of them were selected and appointed after consulting with the exhibitor leaders, so that we might even in the Film Board of Trade have a secretary that would be satisfactory to the local exhibitors.

That is the case in the United States today. There is not a Film Board of Trade secretary in America against whom any objection has been made by any exhibitor in America as they stand today. I consulted with these men we selected, many of these young women that had experience, some experience in the business and quite a few of them were recommended by the local theatre owners themselves. Some of them had had practical experience in the motion picture business. We tried to get—we preferred college graduates, and various other qualifications. We have as high a type of personnel as we could get. Those things were all taken into consideration as we went along from [fol. 486] place to place so that both sides would have confidence in the secretary. I had a meeting at each of these cities with exhibitors. Those meetings were called as fol-

lows: We would meet first with the distributors, then we would find out who the—first if they had a local exhibitors association, who the officers were and get in touch with the officers. In many cases I knew these men. I had been attorney myself for the then national theatre owners. I had been in the motion picture business since 1916, and have been in the business continuously since that time. All of my time has been devoted to the problems of the motion picture industry. I had gotten from time to time to know many exhibitors prior to the trip that I took. I had been counsel for the national organization. I knew them practically everywhere, every exchange center. I know each exhibitor that has been here. I know all those that the Government has had here. I would not want to say how many I know. I know some exhibitors in every distributing center, quite a few more probably in Indiana than anywheres else. I think I know them all in Indiana, because I was their attorney for years before I came East.

I want to describe the efforts I made to get the exhibitors interested in this plan and participate in these Boards of Arbitration, and the work that I have done since then. For the purpose of refreshing my recollection so that I could tell about the trip I made since sitting here, I wrote down [fol. 487] the people that I talked to.

Q. You can use your memorandum to refresh your recollection. I guess there is no objection. Just begin with Albany and just run from city to city.

The Court: Is that necessary? He has told us in general what he has done and the way he approached the situation. I guess he can tell the results. Do we have to waste time on the details?

Mr. Grosvenor: No, I do not think so.

The Court: If the Government does not question it.

Mr. Grosvenor: Mr. Pettijohn has devoted seven years to setting up these Boards of Arbitration, and going from city to city watching the personnel of the Board and the personnel of the secretaries and seeing that these Rules which were drawn with such care have been faithfully and honestly observed. That is the point of Mr. Pettijohn's testimony. I thought that we could illustrate it perhaps more definitely by taking up some of the cities and saying just exactly what

he did do; but if the Government will admit all of that, I will let it go.

By the Court:

Q. The first trip was to set up the Board?
A. Yes.
Q. You have told us what you did, and how you did that?
[fol. 488] A. Yes.
Q. What was the result of what you did?
A. The result was that out of say, the 32 Film Boards of Trade that were set up and 32 Arbitration Boards we had probably the first year complaints against the way the system was working in as many as three or four points. I changed secretaries as a result of those complaints, one from the Department of Justice, one from the local exhibitors. There were six men removed and six women put in their place. That is a record of changes up to the present time. One or two of the ladies got married. And we had to put somebody in their place, things of that sort, but the personnel has been changed until as between 1924 to the present time, the first list of secretaries that I have, there have been 16 changes out of 32.

The Court: Is there anything in addition to that?

In answer to questions by Mr. Grosvenor:

I discussed the Hoy system with the exhibitors everywhere that they knew about it and they were all against it, and so was I. We were unanimous in that opinion. It was done away with and this machinery was laid down from the instructions that were given to me, and was set up in its place, and it has worked.

[fol. 489] Jack H. Greenberg, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am the secretary of the Philadelphia Film Board of Trade. I give all of my time to that. I have been secre-

tary of the Philadelphia Film Board of Trade since January, 1924. I am not the secretary of the local arbitration board. The secretary of the exhibitors' association in that territory is the secretary of the local arbitration board. The territory my Board of Trade covers is all of Eastern Pennsylvania; all of Southern New Jersey; and the entire State of Delaware. There are situated in that territory I would judge about 825 theatres. I have been in the motion picture business about fifteen years. I was an exhibitor, during 1920 and 1921; and then while I was secretary of the Philadelphia Board of Trade. During 1923 up to last May of 1928 I owned a theatre although I paid very little attention to it. I have also been in the distributing end of the business and selling end. From 1914 until 1920 I was connected with the Fox Film Corporation in the capacity of salesman and booker and cashier. During 1920 and 1921 I operated two theatres, one in Lansford, Pennsylvania and one at Summit Hill, Pennsylvania, as an exhibitor. I then disposed of my interest in those two theatres and came back to Philadelphia and took the position as office manager of Select Pic-[fol. 490] tures Corporation, who were distributing Selznick pictures. Some time after that I left Selznick and went with Goldwyn Distributing Corporation as office manager of that company, after which I took the position as Film Board of Trade Secretary.

While I was an exhibitor, I did business with a number of distributors, probably eight or ten distributors. I was solicited on contracts. Prior to the Uniform Contract and while I was in the exhibition business, I paid various deposits on my contracts. I was not in the business during the Uniform Contract, except while I was Film Board of Trade Secretary; and at that time there was no deposit system. It was only while I was in Lansford and Summit Hill. In 1920 and 1921 I put up deposits on contracts. That was the only time I was an exhibitor prior to the Uniform Contracts.

The Philadelphia exhibitors' association appoints exhibitors' representatives on the Board of Arbitration at Philadelphia. I think about seventy per cent of the exhibitors of the Philadelphia territory are represented in the membership of the exhibitors' association. The secretary

of the Philadelphia exhibitors' association attends the meetings of the Arbitration Board. Up to about two years ago the secretary of the Board of Arbitration was secretary in name only. I did practically all the physical work; but about two years ago the exhibitors' association decided that they wanted to keep their pulse on arbitration and they [fol. 491] decided that they would have their secretary do the physical work and keep the minutes and so forth. He attends all meetings but when he does not attend, I act in the capacity of secretary. The Board of Arbitration meets at the office of the Film Board of Trade. The exhibitors' association offices are rather small and the Film Board of Trade offices are much more spacious and much more desirable.

The procedure followed in connection with proceedings before the Board of Arbitration is: The distributors file their claims direct with the Film Board of Trade. Some of the exhibitors do the same thing, and some of them file direct with their secretary. Then he sends the notice out to the members. After I receive a claim, a letter is sent to the exhibitor notifying him of the claim and asking him to answer and telling him that if his answer is not received or if his answer is received and it is not satisfactory that the hearing will be scheduled. Then if we do not receive any reply from the exhibitor we notify the secretary of the Board of Arbitration of the claim, telling him about the complaint and suggesting the date for the hearing; and he sends out a summons to the exhibitor by registered mail, to appear at the hearing, and gives the exhibitor at least seven days' notice.

(Adjourned to March 19th, 1929; 10:30 A. M.)

[fol. 492] New York, March 19th, 1929—10:30 a. m.

Trial Resumed

JACK H. GREENBERG resumed:

Direct examination.

By Mr. Grosvenor (continued):

The number of pictures shown in the course of a year by a theatre in my territory depends entirely upon the

theatre. With the exception of the long run theatres which exhibit a picture sometimes four or five weeks or longer, the average theatre exhibits fifty to, I would say, 250 pictures a year. Even the small theatre which changes daily as a rule exhibits one two-day picture a week.

The Arbitration Board meets every week on Friday. We have a calendar of cases listed for every Friday. The calendar averages about forty cases each week, but by the time the hearing is held there are usually about five or six or eight cases that are heard, because most of them are settled before the case comes up. The Board does not hear cases which do not arise under the Standard Exhibition Contract. I only know of one or two instances where they heard cases which did not arise out of the Standard Exhibition Contract; and that was with the consent of both parties. They have dismissed cases involving controversies arising under contracts other than the Standard Exhibition Contract. That is the practice.

Most cases are uncontested. The proof required on uncontested cases at the hearing is: The distributor is required to produce the contract; all the necessary evidence [fol. 493] to show that the pictures were available to the exhibitor; that the dates were confirmed to the exhibitors in accordance with the terms of the contract. As a rule, our members send their confirmations by registered mail, and they produce the registered receipt to show that the pictures were all delivered by registered mail, and that the pictures were not accepted on the dates that they were booked.

That is under the clause of the contract relating to specification of play dates. The distributors are required to assign play dates, and the picture must actually be refused before the distributor can file a claim with the Board of Arbitration for breach of contract, unless in the case where the theatre closes, which our Board considers is a breach of contract. If an exhibitor closes his theatre without making any provision for the disposition of the contract the distributor then files a claim for the entire unplayed portion of that contract. When the claim is for damaged print, the sort of evidence required depends upon the circumstances. For example, a claim for a damaged print,

if the exhibitor disputes it the distributor, as a rule, will be required to bring the print and show it to the Board of Arbitration, show just what damage has been done. Sometimes the sprockets are torn; and sometimes the sprockets are pulled. Other times if the print is burned completely, why then the exhibitor, as a rule, will not dispute it; and [fol. 494] it is just a question of the amount involved.

In the case of lost prints, the exhibitor is required—it is a very difficult matter to decide, the matter of a lost print if it is a disputed fact. The exhibitor is required to disprove it. In our territory, and I believe it is the same throughout the whole country, an exhibitor can secure a receipt from the postmaster for one cent, on the payment of one cent he gets a receipt, and he can therefore show he sent the film back; and if he can prove that the distributor has no claim.

Most of the cases before my Board of Arbitration are decided unanimously. I believe there were three cases requiring a seventh arbitrator in the last year. In the five years I do not quite know, but I do not think there more than an average of two or three a year at the most.

There is an arbitration statute in Pennsylvania. There have been no cases brought in the last five years while I have been secretary to restrain an award that I know of; and if there had been I believe I would know it. There have been several cases brought to confirm an award, but I do not believe that the distributor ever collected on that, because they were usually cases of irresponsible exhibitors.

There were 1042 claims filed with the Arbitration Board in Philadelphia in 1928. I think 679 were settled before [fol. 495] being submitted to arbitration, to be accurate. 323 cases were heard. There were four awards in 1928 against active exhibitors which were not complied with. These four awards were against one exhibitor. His name was Emanuel Israel. He had about ten contracts with different distributors, that is, he had contracts with ten different distributors, and it appeared that four of the distributors,—they were regional distributors, of the smaller class, with the poorer pictures, I would say, and he decided he did not care to play their contract with the result that he just ignored their contracts, and they brought

him before the Board of Arbitration and secured awards on those four contracts. The other distributors having contracts with that exhibitor then demanded a deposit. The awards were not complied with. The maximum amount fixed by the Arbitration Board in the case of these awards was $150. The awards were not complied with.

Q. Now, the six distributors demanded security after the awards were not complied with?

A. That is right.

Q. And the Arbitration Board having fixed the maximum of $150?

A. Yes.

Q. What were the security amounts demanded by the distributors?

A. Four of the distributors had feature contracts and they demanded $150 and two of the distributors had only short subjects, comedies and news reels, and they demanded $75 each.

[fol. 496] Q. Do you recall which were the distributors who demanded the $150?

A. Yes, I believe I do. Pathe, Metro and Fox. They each received $150 on their contracts. Educational and Liberty received $75 each. The exhibitor put up with each one of those exchanges the amounts I just mentioned and secured service.

Q. Did he comply with the awards?

A. No, he has never complied with the awards up to this time.

The distributors who had those awards did not recover anything. The matter is now in court. The exhibitor subsequently transferred his theatre to another party, and in transferring his theatre, he made a provision in the contract of transfer, which provided that the new owner take over only those contracts on which he placed deposits, so that he could recover those deposits in the event that those contracts were completed, but the purchaser operated the theatre for about two months, after which he closed the theatre on account of poor business. Now, unless the old owner takes back the old theatre and operates the theatre, he will probably forfeit those deposits.

Q. Did the six distributors continue service?

A. Yes, sir.

Q. You know that for a fact?

A. Oh, yes. Only five distributors. There was one distributor, the Paramount, that had a contract on which he [fol. 497] placed no deposit and they suspended service.

This exhibitors contention was that he had over-bought. He was rather new in the business and he was not familiar with just what type of picture would be suitable for his theatre and he had gone out and purchased what he contended was poorer pictures and when he found that they were not suitable, went out and bought more pictures. The new owner to whom he transferred the theatre was cleared. He only assumed those contracts which he was obligated to assume under his agreement with the previous owner. The aggregate week's rental paid by that exhibitor was I would say between $200 and $250 a week. That included features and short subjects. A brief description of the rentals paid for pictures by theatres in my territory is as follows: A first-run in a city like Philadelphia would pay for a week's rental from about $500 to $5,000, but there are pictures which play long runs, such pictures, as "The Big Parade" and "The Singing Fool," the better class of pictures that may run as high as $50,000 for a first-run, because those pictures are usually played on a percentage basis, the distributor receives a percentage of the gross receipts.

The subsequent runs pay, well, it would depend on the theatre and the run. I think it has been brought out here just how the subsequent runs get reduced rentals until the last run probably pays $7.50 to $10.00. In cities outside [fol. 498] of Philadelphia, it would depend on the size of the city how much the first run theatres pay. Let us take Reading which has a population of 120,000, would pay about $300 to $2,500 for one week for a picture, and sometimes they play pictures on a percentage. And the lowest rentals paid on pictures in that territory are about $7.50 for features.

Q. Some of these exhibitors having these contracts, involving thousands of dollars of rentals are up before the Arbitration Board?

A. Yes, sir.

Q. And the Arbitration Clause maximum of $500 is applied by the Arbitration Board in those cases?

A. Very seldom. The Arbitration Board has a rule, when they fix a maximum amount of deposit, they take into consideration the size of the theatre and the rentals they pay. When it is an extremely small theatre they fix a maximum deposit of $100, and when the theatre is a little larger, they may fix it at $150, or $200.

The Arbitration Board has never departed from the terms of the Arbitration Clause, to my knowledge, in the amount of security demanded. I cannot recall with reference to any particular case the largest aggregate rental involved in contracts coming up before the Arbitration Board, in which security has been demanded. Some of the cases where it involves a first-run exhibit, the entire aggregate of the contracts under which the dispute arises may [fol. 499] involve as high as $10,000 or $15,000.

In answer to questions by the Court:

The size of the award would depend on the claim that is brought. It might be for two pictures or three pictures. The average case is against the small exhibitor; the small exhibitor that pays a rental of $10 to $25. Most of the cases are filed against those exhibitors in the outlying sections. As a rule, the larger exhibitor is a responsible exhibitor and lives up to his contractual obligations. The amount of claims in dollars would depend entirely on the claim. The average I would say the average claim would run about $75 or $100.

Most of the large claims in our territory involve contracts where the exhibitor has gone out of business and made no provision for the contracts. That constitutes a breach of contract and the distributor, in order to go to a court of law under those contracts, must first submit to the Board of Arbitration. As a rule, the awards in our city are very small, with the exception of those particular cases. Each claim is different. It depends entirely upon the size of the theatre and what the nature of the dispute would be. I cannot give you the exact average. For instance, we had 1,042 claims during the year 1928 which were submitted to the Board of Arbitration and they involved $120,000 in the aggregate.

[fol. 500] In answer to questions by Mr. Grosvenor:

I have a copy of Exhibit 5. I looked it over before going on the stand. These are some of the files of some of the cases—or parts of some of the files of some of the cases decided by the Arbitration Board in the last three or four years, taken from my files by the Agents of the Department of Justice.

Q. I did not ask you that. State how many files or parts of files of cases which the Arbitration Board at Philadelphia had, which the Department of Justice agents took.

A. There are 225 pages; I do not know how many others, they just furnished me with a receipt. I did not see the exhibits until after they left the office and I really do not know how many pages there were.

Page 1 is a form of notice which is sent by the Secretary [fol. 501] of the Board of Arbitration by registered mail to the exhibitor, notifying him of the complaint registered against him and summoning him to appear before the Board of Arbitration. It was the form used at that time. I believe there has been some change in the phraseology since that time. It is sent by registered mail. We send all notices by registered mail. As a matter of fact, the Board of Arbitration will not hear any cases unless there is proof shown that the exhibitor received notice by registered receipt. The file has not the notice of the complaint in this case. Page 2 is not the notice of complaint to which page 1 refers. Page 2 is a subsequent complaint. That is, another complaint against the same individual, by the same exchange. Page 2 is the form of complaint that is used by the distributor in filing claims with the Board of Arbitration. There is a record in the file here of what the Board of Arbitration did on that complaint. That is on page 5. This document on page 5 is the minutes of the Arbitration Board hearing of that particular case of F. B. O. against H. Perlman. First the name of the case, then the word "committees, Exchanges, exhibitors and names;" those people are the arbitrators. The Exchanges are listed and the exhibitors are listed, and the Exchange representatives, where it says, "Exchanges," that means distributor representatives. In the minutes we keep of these proceedings, it is customary to state the names of the arbitrators on the minutes. That is always done. The next line, plaintiff and

[fol. 502] defendant were present; it is customary in the minutes to state whether the parties appeared. Then we have a recital of the evidence. That also is customary; in all cases we have a synopsis of the entire action. This case is about——

The Court: It is all shown on the face of the papers, is it not?

Mr. Grosvenor: There are some more papers about that, your Honor, that will appear later.

The Witness: In this particular case, this exhibitor, there was another bicycling claim filed prior to this time, against this same exhibitor. They appear on pages 66 to 72. Two bicycling cases against the same exhibitor. In each case he admitted that he committed the offense. He complied with the award.

Page 3, of Exhibit 5, entitled "Case of the Lyric Theatre vs. Fox Film Corporation." That was a claim brought by an exhibitor against the Fox Film Corporation because the Fox Film Corporation furnished that exhibitor with a bad print; and the exhibitor claimed damages. The Board of Arbitration, after hearing all the facts, decided that the exhibitor was damaged and awarded the exhibitor $25, and the Fox Film Corporation promptly paid it.

Page 26, case 4, at the bottom of the page. That was the case of an exhibitor filing a claim against the Fox Film Corporation for what we term "a miss-out." The Fox Film Corporation failed to ship the film to the exhibitor in time [fol. 503] for the exhibitor to receive it; and the result was that the exhibitor had to miss his matinee and had to substitute a picture for the evening show, and the exhibitor brought a claim against Fox for damages. The Board, after hearing all the facts, decided that the exhibitor was entitled to damages, and awarded $110. $35 as cash damages, and $75 which represented the rental value of the film, which he was to have the privilege of playing without charge. That exhibitor was located about 125 miles from Philadelphia. He was represented at the Board of Arbitration by the secretary of the Motion Picture Theatre Owners, who was also the secretary of the Board of Arbitra-

tion; and when he represented an exhibitor I acted in the capacity of secretary of the Board, taking the minutes.

In answer to questions by the Court:

Those names are the arbitrators. The notice of who represented him is right on top. The exhibitor was represented by the secretary of the exhibitors' association.

In answer to questions by Mr. Grosvenor:

That was the record of the Board of Arbitration of its disposition of the case.

Referring to page 87, there is another incomplete file there. There are two cases there on that page of claims brought by exhibitors against distibutors. The first claim is the claim brought by the Orpheum Theatre, East Manchunk, Pennsylvania. It is just that the distributor shipped the exhibitor a print in bad condition, and the Board, after [fol. 504] hearing all the evidence, awarded the exhibitor $40 as damages.

The next is case two on that page. It is a case for violation of protection. The exhibitor had a contract which provided for the exhibition of a certain picture prior to exhibition in another theatre; and the distributor's booker made an error, and delivered the picture to the subsequent run prior to its delivery to the exhibitor who had the right to exhibit that picture ahead of him; the result was that the Board awarded $100 damages to the exhibitor, $50 in cash and $50 which represented the rental value of the picture which the exhibitor was to receive without charge.

These last cases are illustrations of the sort of cases the exhibitors bring before the Board of Arbitration.

[fol. 505] Colloquy Between Court and Counsel

Mr. Grosvenor: Your Honor, we have a stipulation which the stenographer may read into the record.

It is agreed that counsel shall go before the Court and state to him that Mr. Thompson, if given a day's time, will select exhibits which will illustrate each of the classes of typical cases he claims are heard and determined by the

Boards of Arbitration, which shall include claims by distributors against exhibitors and exhibitors against distributors; that within the same time he will select exhibits which he claims support the allegations of the petition alleging agreements supplemental to the rules of the particular Film Boards. That upon the introduction of these illustrative exhibits, exhibits 1 to 8 will be withdrawn, and defendant shall be permitted to call the secretaries to explain or amplify the exhibits which are so introduced; and such testimony may be accepted as typical of what the testimony of the other secretaries would be if counsel can agree to such effect after testimony has been given.

The Court: Then I understand counsel wishes this hearing adjourned until tomorrow at 2:15 and will then be ready to proceed.

Mr. Grosvenor: Yes.

Mr. Thompson: I might add in this connection, your Honor, of course that does not state that that is the entire government's record. These other things that have been [fol. 506] discussed with counsel, they relate to what has been agreed upon as typical.

The Court: It will dispense with the necessity of considering the explanation of the files from the different Boards of Arbitration which have already been introduced in evidence.

Mr. Thompson: It will take out about from fifty per cent to seventy-five per cent of the documentary evidence.

(Adjourned to March 20th, 1929; 2:15 P. M.)

[fol. 507] New York, March 20th, 1929—2:15 P.M.

Trial Resumed

Mr. Thompson: Your honor, we have been working industriously, getting the exhibits boiled down and arranged; they are not all ready yet to be introduced in evidence. Counsel has suggested that we might put in certain files, and then he may call the secretaries he desires to testify and then we will finish up with the preparation of the rest.

Mr. Grosvenor: I believe you stipulated as to certain Film Boards of Trade.

Mr. Thompson: Yes, subject to certain check. You see, everything had to be done by telephone—telephoning back and forth. I take it the other exhibits will be withdrawn. Shall we start in with No. 1?

The Court: Start in with No. 9.

Mr. Thompson: No. 9, then is material introduced under the stipulation with reference to the copies, and so forth, relating to the Charlotte Board of Trade.

(Marked plaintiff's Exhibit No. 9.)

No. 10 will be material relating to the Dallas Film Board of Trade.

(Marked Plaintiff's Exhibit No. 10.)

No. 11 is material from the files of the Detroit Film Board of Trade.

(Marked Plaintiff's Exhibit No. 11.)

No. 12 is material from the files of the Omaha Film Board [fol. 508] of Trade.

(Marked Plaintiff's Exhibit No. 12.)

No. 13 is material from the files of the Salt Lake City Film Board of Trade.

(Marked Plaintiff's Exhibit No. 13.)

[fol. 509] Terrence E. Drazin, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am in the offices of the Film Board of Trade at 469 Fifth Avenue, New York. I testified in the other case that I received reports from the thirty-two secretaries at the end of the year, and then filed those reports at my office. And

from the reports from the secretaries so received, I prepared a statement showing the disposition of claims under arbitration during the last five years, that is the years 1924 to 1928 inclusive. It was checked over by me.

Mr. Grosvenor: I offer that in evidence.

(Defendants' Exhibit I-1.)

In answer to questions by the Court:

By "claims litigated," I mean there were some court proceedings.

In answer to questions by Mr. Grosvenor:

I have also prepared from these reports of the secretaries a statement showing the total number of claims filed by distributors and exhibitors, and classifying such claims for 1927 and 1928. It was checked over by me, and it is correct.

(Defendants' Exhibit J-1.)

In answer to questions by the Court:

The aggregate amounts of claims: in columns 3 and 4 represent the amounts of the rental of the pictures in dis- [fol. 510] pute under the contract.

I am not a copyright expert, your Honor, so I am afraid I can not explain the difference between switching and bicycling.

Mr. Grosvenor: We will show that later, your Honor.

I simply took that term from the reports. I had an idea what it meant.

In answer to questions by Mr. Grosvenor:

These classifications were made for me, and they have been used before. I have similarly prepared a statement of the number of claims filed with the Arbitration Boards and details as to amounts from the reports of the secretaries. It was checked by me, and it is correct.

(Defendants' Exhibit K-1.)

Mr. Thompson: I offer Government's Exhibit 14, material from the files of the Seattle Film Board of Trade.

(Marked Plaintiff's Exhibit No. 14.)

[fol. 511] ROBERTA B. LYNCH, called as a witness on behalf of the defendants, having been duly sworn testified as follows:

Direct examination.

By Mr. Grosvenor:

I am located at Seattle, Washington. I am the secretary of the Film Board of Trade at Seattle, Washington. I have been secretary of the Film Board of Trade there since January, 1925. That comprises my entire period of experience in the motion picture business. My husband was connected with the motion picture business for many years.

The territory covered by my Film Board is western Montana, northern Idaho; all of the State of Washington and Alaska. There are about three hundred and eighty theatres in that territory, ranging from the large theatres in the big cities to the small theatres in very small places. There is an exhibitors' association in my territory. I could not say exactly what percentage of the theatres belonging to the Exhibitors Association, but I would judge about 70 per cent. I am also secretary of the Board of Arbitration. The Board of Arbitration meets in Seattle every two weeks. There are three exhibitor representatives always sitting on the Board of Arbitration. The Exhibitors Association appoints them. By arrangement with the Exhibitors Association we change the Arbitration Board every three months. That is, both the distributor representatives and the exhibitor representatives. They found it inconvenient [fol. 512] to change every month; so we arranged to change the Board of Arbitration out there every three months. The secretary of the Exhibitors Association is always present at every meeting of the Arbitration Board representing his association; the members of his association, and sometimes exhibitors who are not members of his association who request him to represent them. The cases are always heard by six arbitrators. We have only had one case which was heard by a lesser number than six; and that was by agreement between both parties.

The members of my Film Board of Trade observe the Rules of Arbitration, with the exception of the notice of adjournment. That is governed by circumstances. We do

not hold to the three days' notice. It is governed by circumstance and by the judgment of the Board. Also the rule in regard to change. We have met by arrangement with the exhibitors each week; otherwise, they are very strictly observed. That has always been so.

A large number of the claims or controversies in my territory are settled without going to the Board of Arbitration. And the awards that are rendered by the Board of Arbitration are very often settled and compromised without any official consultation. Once in a while I am called up, occasionally. There is no rule or regulation which bars a member of the Film Board in any respect from settling an award or any other controversy with an exhibitor. In fact, we encourage it, and it is done very frequently. I am speaking of the period prior to the award as well as the [fol. 513] period after the award. There have not been suits in these states which my Film Board of Trade covers to enjoin the awards, to set aside the awards by our Board of Arbitration. In the entire period of five years we have never had a suit to set aside an award. There have been several suits to enforce the judgment. I mean to collect an award. Several of that sort. I think in one case there was some collection made. That was just at the time I was beginning with the Board, and I am not familiar with it. Suits were filed before I was secretary. In no cases that I recall was service suspended for uncompliance with awards in the years 1927 and 1928, and I remember only one case in 1927 and 1928 where security deposited by an exhibitor in compliance with the awards. That was at Lake Stevens, Washington. The operator of that theatre was a foreigner; and he was also a laborer in a lumber camp which is at Lake Stevens. The theatre was open one day a week, and he did not seem to understand about a contract at all, and there were several awards against him. He deposited security with one company, and just played from one company, because the theatre is just open one day a week; and he is still playing under that arrangement. He deposited under one contract and got a picture. I think the deposit was $100. I am not positive about that. It was approximately $100, I would say.

In answer to questions by the court:

He did not pay his awards finally. He is still working ing out under that arrangement.

[fol. 514] In answer to questions by Mr. Grosvenor:

All other awards against active exhibitors in the two years 1927 and 1928 were complied with, settled or adjusted. The members of the Board of Arbitration in determining the amount of security, the maximum amount of security are governed by the theatre against which the case is brought; by the income of the theatre, the seating capacity, and business conditions. I think they try to be fair. The Board of Arbitration sets the maximum amount which a member may demand. The members fix their amount based on the price of the print, plus the rental price of any picture of the contract.

The government has introduced a file here as Exhibit No. 14. This is not a complete file of the papers in this case. The contract is not here and the booking sheet. It is a complete statement of the facts in the file. That should be amended. I meant the complaint was complete. The complaint is a complete statement. There are additional facts to add to that case, to those that appear in the files. I shall recite briefly what that case was about. This case was on a Kinogram News which was played for six months, and the exhibitor decided to cancel the contract. The Board of Arbitration held that he had assumed the contract by playing it from January 1st until June 18th to 24th. Let us see if we can get that a little more in detail. First, there was a contract entered into by the Educational Film Exchange with the Pacific Northwest Theatres, Inc. When the [fol. 515] Pacific Northwest Theatre, Inc. were organized in the Washington territory they built some theatres, and they bought some, with others they entered into a buying arrangement, an operating arrangement. About the end of 1926 this arrangement was changed when West Coast bought a great many of these theatres, and the chain of theatres fell apart, the buying arrangement; and this theatre reverted to the man who had formerly managed it, and he had always maintained an interest in it. There was no question of the transfer of the contract as they all went on being played as they had formerly been. There was some change of

management at the beginning of the year. Then that management continued to take the Kinogram for six months under the contract. Then they decided to cancel, and sent a notice to the Exchange on June 10th that they desired to cancel this contract. The next picture, the next issue of the news, which was shipped directly from New York to this Exchange, that was the first run for the news in that territory, for this Kinogram News in that city, the Exchange shipped the next picture which was refused; then they brought a claim in the Board of Arbitration against the Pacific Northwest Theatres, Inc., who had signed the contract; but the Pacific Northwest Theatres, Inc. in assuming the theatres actually then had an interest and were still playing under that contract. The only one in question was this news in the Rivoli Theatre. They then brought a claim [fol. 516] against the Consolidated Portland Theatres, which was the new corporation for this news in the Rivoli Theatre; and the Board gave an award. The Consolidated Company was given notice of the hearing by letter. The theatre was located in Portland, Oregon. After the award was rendered, it was complied with.

The exhibitor did not exactly object to the jurisdiction. He objected to the work "require" which is used in our notice. The Educational Film Exchange does not maintain an office in Portland, Oregon.

In answer to questions by the court:

His objection is written under date of September 17th.

In answer to questions by Mr. Grosvenor:

The award was complied with.

Cross-examination.

By Mr. Thompson:

There is a Film Board and an Arbitration Board in Portland, Oregon. The exhibitor did business with the Educational Film Exchange in Seattle, because they had no Portland office. The exhibitor's office and place of business was in Portland. I did not say the award rendered by the Board in this matter was due to other evidence which does

not appear in this file, excepting that the contract is not there, nor the booking sheet under which they received their pictures.

Q. I understood you to say that some of the facts stated in this letter of September 17th were not correct?

A. No. Did I make that statement?

The board considered this letter dated September 17th in hearing the case. The letter was read and considered. [fol. 517] The Court: We will assume that the Board had those two letters before it, together with the contract and the booking sheet, and that they rendered the award on Sepember 27, 1927.

I cannot state whether the Board thought the facts were any different or not from those stated in that letter. The only thing I can state is the Board carefully considered every letter that is written in; their reactions to the letters I could not state.

The territory covered by the exhibitors' association that I spoke of is I think the same territory which my Board covers. It covers the whole territory. We do not have a different procedure in claims against exhibitors in Alaska. We arrange that they shall have ample time to be present; we send notices a sufficiently long time ahead. I could not state exactly the percentage of cases in which exhibitors appear to defend their cases before the Arbitration Board, without the records. The exhibitors's secretary is present at every meeting. He represents the members of his association. Very often he will represent an exhibitor who has not requested him. If he is requested to do so, he definitely represents him. The exhibitors themselves are present there in many cases. I should say in at least 70 per cent of the cases. That is merely an approximate guess.

The members of the Seattle Film Board are allowed to [fol. 518] compromise either claims for bicycling or awards rendered for bicycling. We have had a bicycling case in which the exhibitor admitted that he bicycled his picture and an award of $250 was given, and the Exchange made arrangements for him to pay this off on a weekly basis. That is, it made arrangements to pay the award.

[fol. 519] DAVID PALFELYMAN, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination

By Mr. Grosvenor:

I reside in Detroit, Michigan. I am Secretary of the Detroit Film Board of Trade. I am secretary also of the Board of Arbitration there half of the time. The secretary the other half of the time is Mr. H. M. Richey, Manager of the Exhibitors Association. I have been in the motion picture business since 1915. I have been giving all of my time to it since then. The branches I have been in are the exhibition, distribution and Film Board of Trade. I have been Secretary of the Film Board of Trade since February, 1924. The Board of Arbitration has been operating throughout that period. There have been three exhibitor representatives on the Board throughout that period. They attend all meetings. I mean the exhibitors have three representative- at all meetings of the Board of Arbitration. The Exhibitors Association of the Motion Picture Theatre Owners of Michigan appoints the exhibitors' representative. I think Mr. Richey selects them for that Association, but I am not positive of that.

The territory that the Detroit Film Board covers is the lower peninsula of the State of Michigan and two or three towns in Indiana. This Michigan Association covers that territory, except two towns in Indiana, which are very small [fol. 520] towns. The percentage of the exhibitors belonging to the Michigan Exhibitors Association is nearly all of them of any consequence. I would judge 90 per cent of them. Michigan has an arbitration statute. During the period that I have been secretary there, No suits have been brought to set aside the awards rendered by the Board of Arbitration on account of error or some other reason. There have been several actions brought to enforce the awards or judgments. They were brought against exhibitors who had gone out of business.

The Board of Arbitration meets every third week. For three months we meet in the office of the Detroit Film Board of Trade, and then for three months in the offices

of the Motion Picture Theatre Owners of Michigan. That is Mr. Richey's office. The average theater in my territory would show approximately 250 features a year. There are theatres showing double feature bills; we have several theatres in Detroit who show more than seven features a week. Some theatres show one or two a week; generally they show one once a week. In the entire territory, I should say the average rental per feature for theatres in my territory is about $25 per feature. I believe 427 claims were filed with the Arbitration Board in 1928. Our awards are practically invariably unanimous. In the five years I have been secretary, we used the seventh arbitrator three times.

The Rules of Arbitration are observed literally by the members of the Film Board of Trade in my territory.

[fol. 521] Q. In 1928, in how many cases was the suspension notice sent out on active accounts, do you recall?

A. No, I do not. I think it was fifty. On active accounts did you say? There were only ten on active accounts. Forty of them were inactive. An inactive account is where the theatre had closed or been sold or transferred prior to the making of the award. There were I believe five theatres involved in those ten notices to active accounts. There were five awards against the same theatres in that group. In one case in 1928 security was deposited after awards had not been complied with. The Merrill Theatre, Merrill, Michigan. The Government took the file on that. The theatre complied with the award. They complied with this award more or less unintentionally. It was on or about September 18th, 1928 that he complied with it. The facts in that case are: This was a complaint by the Fox Film Corporation against Vincent Barkowski of the Merrill Theatre, Merrill, Michigan. The Exchange alleged that the exhibitor had damaged three reels of their feature picture called, "The Escape," on its exhibition at his theatre, by badly scratching the film so that it could not be further used, and they had been compelled to purchase new reels. These were reels 1, 3 and 5 of the print. In order to get any use out of the remaining reels, they had to buy new ones and they filed their claim under the contract which provided that he would pay four cents per foot, for the amount of feet that were damaged. I was present at the

arbitration hearing. The exhibitor was given notice by registered mail. He did not appear. The evidence the [fol. 522] Arbitration Board had before it was the correspondence and contract and confirmation play dates from the Fox files, and the damaged reels of prints. He did not comply with the award at the time, and a deposit notice was sent. He placed the security with the Pathe Exchange. He had contracts with six or eight Exchanges, but he selected the Exchange with whom his contract would give him feature pictures and short subjects on the same contract, so he placed a $200 security with Pathe and played out their contract, which I think ran him for ten or twelve weeks, because he used one show per week, one complete show.

When the contract had been completed with Pathe, they gave him back his $200 and he found that the only other contract with both features and short subjects that he had was with Fox, so he placed $200 deposit with Fox, and the award was in favor of the Fox Film Corporation, which had been rendered, so I recommended to Fox that they apply $120 of the deposit against the award and refund the exhibitor $80 and immediately clear the theatre, so that he could play pictures from his other contracts without placing up the security. That was done immediately. He was now off the list.

I see something here relative to "The Big Parade" in a theatre in Saginaw. That is quite a complicated case. I have some memorandum that I can refresh my recollection from: I can give you the whole story but I do not know [fol. 523] whether I can give it to you without referring to them or not. I am ready to proceed. This complaint is Charles Q. Carlyle of the Mecca Palace Theatre Company of Saginaw, Michigan vs. Metro-Goldwyn-Distributing Corporation.

It was heard before the Arbitration Board in Detroit on September 17, 1926. It was based on a contract, dated June 23, 1925, between this exhibitor and MetroGoldwyn for a group of pictures, including "The Big Parade." All of the pictures that had been released by Metro-Goldwyn had been exhibited by the exhibitor, except five or six pictures, that had not been produced and released, among

which was "The Big Parade," which the exhibitor had under contract at $400.

At the time this complaint was filed, Mr. Carlyle and the Mecca Palace Theatre Company had sold their interest in the Mecca Palace Theatre Company to the W. S. Butterfield Theatres, a circuit, operated in Michigan, and the Butterfield Theatres had agreed to assume Mr. Carlyle's exhibition contracts.

On October 1, 1926, Mr. Carlyle brought this complaint against Metro-Goldwyn demanding that they deliver to him "The Big Parade" under his contract on or before September 26, 1926 or pay him damages for not delivering the picture. Metro-Goldwyn alleged that the picture had not been released to motion picture theatres; that the only exhibitions of the picture had been in legitimate theatres, at reserved seats, advance admission prices of a two-dollar scale (that is the trade term for it); it has not been roadshowed in Saginaw, but it had been played in Detroit and [fol. 524] in Grand Rapids, both in legitimate theatres. The exhibitor was unable to show where the picture had ever been exhibited anywhere in the United States in a motion picture theatre, although a strenuous attempt was made to find some place where it had been exhibited. The complaint was heard before the Arbitration Board and resulted in a tie vote. The exhibitor, of course, appeared, that is the plaintiff. Mr. Richey represented him on the first hearing, and the exchange's branch manager appeared.

A seventh arbitrator was selected and agreed upon by the six original arbitrators. The seventh arbitrator being Fred W. Woodworth, the Collector of Internal Revenue in Detroit, and a hearing was had on the question,—a final hearing on September 17th, and at this meeting, Metro-Goldwyn was represented by their counsel in Detroit, Mr. Charles Beecher Warren, and Mr. Carlyle was represented by some attorney from the office of the attorneys for the Exhibitors' Association, I do not recall his name.

After Mr. Woodworth had heard the case again presented to him,—all seven arbitrators being present at this hearing, he dismissed the complaint. I believe that is all of the facts.

There was a lot of additional evidence put in, but it was not very material in regard to the efforts of Metro-Gold-

wyn to supply a picture for a definite date that Mr. Carlyle [fol. 525] had open. They finally secured a pre-release of the feature picture called, "Bardsley the Magnificent," which they offered Mr. Carlyle for exhibition on September 26th, the date he was demanding for "The Big Parade."

The exhibitor alleged, but I do not think he was able to convince the Board, that arrangements had been made for road-showing of the picture ahead of his run at the Auditorium in Saginaw, which is owned by the City of Saginaw. I believe the picture was eventually road-showed at Saginaw, at the Butterfield Theatre, however. After the decision by the seventh arbitrator, there was much comment on this complaint and the Exhibitors Association withdrew their members from the Arbitration Board for a period of three or four months, I think until the following January, before it was again reopened. They refused to appoint arbitrators from September to January, 1926. Then they returned, and since then they have been acting with the distributors continuously.

I said that some of those awards against active accounts were against one theatre, that was the Ecorse Theatre. It is in a suburb of Detroit. Five of those ten awards were against that theatre. It is a small theatre, seats about 450, in a down-river suburb of Detroit. The suburb is practically part of the city. The exhibitor who operated the theatre, operates it as a side line. He is quite familiar with arbitration procedure, however, because he has claims every [fol. 526] other week, and he has the habit of not settling his claims until thirteen days after the awards, knowing that we wait seven days before demanding security, and seven more days before service is suspended, so he usually tries to come in on the thirteenth day. Occasionally he slips up and the suspension notice goes out, but he settles it on the day the suspension notice goes out. There is no interruption of dates. He has not had any dark houses. The security demanded of him is $100 almost invariably. They are small claims, as a rule, $15 to $25.

Mr. Richey represents the exhibitors at the meetings of the Board of Arbitration, the general manager of the Exhibitors Association and of the Motion Picture Theatre Owners of Michigan. Either he or his assistant is present at

practically all meetings. He looks after the interests of exhibitors who may not appear.

I have been in this business thirteen or fourteen years. The effects of this arbitration on the industry are as follows: It has been exceedingly beneficial in the State of Michigan, I know, because I have been in constant contact with it from three different sides. It has stabilized the business and overcome a large number of difficulties and problems that we formerly had, both problems of distributors and of exhibitors.

In answer to questions by the Court:

During the interval while the exhibitors refused to par- [fol. 527] ticipate in this system of arbitration, we were negotiating with them during this entire period, trying to find out from them exactly why they would not participate in the arbitration, and all that we could get were general statements; we could not get a specific reason out of them. The system was just suspended; there was no arbitration. There was no arbitration at all during that time. Several of the branch managers of Exchanges in Detroit began objecting strenuously to the suspension, because their contracts were being disregarded for trivial reasons and there was considerable correspondence between them and their New York offices, protesting against the lack of arbitration.

The manner in which exhibitors were persuaded to come back is as follows: Mr. Richey and Mr. Ritter, a member of the Arbitration Board and myself, came to New York and conferred with Mr. Pettijohn and Mr. Hays, and just got together, that is all. They agreed, after a conference, to resume arbitration. Grievances were stated at the conference by the exhibitors. I think the principal argument that they put up was that the Arbitration Board, the Exchange members of the Arbitration Board in Detroit insisted on following the Standard Exhibition Contract and were reluctant or rarely made awards contrary to the provisions of the contract or outside of the contract.

[fol. 528] ROSEMARY FOLEY, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary of the Omaha Film Board of Trade. I have been secretary there about a year and a half, and prior to that I was assistant secretary. The period I have been there is over two years. It has not been more than two and a half years. The territory covered by the Omaha Board is the entire state of Nebraska; three tiers of counties on the western boundary of Iowa, and a few counties in South Dakota. That is all. Some of the theatres in my territory are served from Des Moines, and from another Film Board, the Minneapolis Film Board and the Denver Film Board.

There are about 1400 theatres in my territory. I am secretary of the Board of Arbitration and attend all hearings. There have been complaints that we have heard cases without three exhibitors, with only two exhibitors; but we have never done that without the consent of the Exhibitors Association. Mr. C. E. Williams, president of the Exhibitors Association, attends all of the arbitration hearings, and represents all exhibitors, whether they have answered the complaint or whether or not they are members of his Association. That has always been while I have been secretary. When we have less than six arbitrators, we have two exhibitors and two distributors. That is with the consent of the Exhibitors Association. We have [fol. 529] done that very seldom, but it has been done. At the end of 1928 there were six active exhibitors who had failed to comply with arbitration awards. There were sixteen awards in all that had not been complied with. One exhibitor had I would say six awards issued against him.

Q. Have these six exhibitors been getting pictures?

A. Yes.

Q. What did they do?

A. Well, in a number of cases they had their pictures paid for, and they played those pictures.

Q. And did not have to put up security?

A. And did not have to put up security. Then there were pictures that they had paid for some time previous,

and that had been shelved, and not been played, and they picked those up.

Q. And some of the awards have been settled since?

A. Yes.

Q. Adjusted or compromised?

A. Yes, sir.

The members of the Film Board of Trade settle claims before and after awards. There is no rule preventing them from settling an award after it is entered.

In answer to questions by the Court:

I know the Exhibitors Association in my territory is open to all owners of theatres on equal terms. I know that to be a fact—that it is open to all exhibitors, although not all of the exhibitors belong. They are constantly trying to get new members. Any theatre owner or exhibitor may join the Exhibitors Association on equal terms with any other member. I know they would be only too glad to have exhibitors join.

The Court: Is there any dispute about that, Mr. [fol. 530] Thompson, in regard to these Exhibitors Associations. Is the fact disputed that any exhibitor may join any of these Associations on equal terms with the other members?

Mr. Thompson: I think so, your Honor. I am not very familiar with their affairs; but it has been my supposition that they try to get members rather than discourage them.

The Court: At least the government does not content that any exhibitor is arbitrarily excluded from the Exhibitors Associations.

Mr. Thompson: I have never heard of any such thing, Judge.

Mr. Hess: I think you ought to state to his Honor that some local exhibitors' organizations, state organizations who will not take exhibitors who represent or operate theatres that are affiliated with distributors or producers.

The Court: Except for that.

Mr. Hess: Except for that.

(Discussion.)

In answer to questions by Mr. Grosvenor:

That file refers to a man named Newton, who had a theatre in Omaha named The Garden Theatre and another theatre named The Lyric. That file is not complete. I have refreshed my recollection by going through the papers. I have arranged the papers in chronological order. There were so many dates and so many awards that I had [fol. 531] to arrange them on a piece of paper. On November 20, 1926, the Producers Distributing Corporation filed a claim against Victor Newton, operating the Garden Theatre at Omaha, Nebraska on a contract signed by L. S. Wagner who had operated the theatre prior to Mr. Newton's operating same; and which they claimed that Mr. Newton should complete the contract because he had played pictures under Mr. Wagner's contract. Victor Newton had also entered into a contract with Pathe. Victor Newton had also entered into a contract on or about May 15 [fol. 532] personally with Producers Distributing Corporation. Mr. Newton claimed that he did not take over the theatre until August of 1926. There were sixteen subjects left to be played on the Producers contract amounting to $141.50.

On November 29th, the claim was scheduled for hearing before the Board of Arbitration; and it was heard on December 8th, 1926; and Mr. Newton was not present, although he answered the claim. The answer does not appear in these exhibits although the answer was presented to the Board at the time the claim was heard.

The Board ordered that Mr. Newton complete the contract with Producers Distributing Corporation at the rate of one picture per week; and they gave him fourteen days in which to set these dates; and that they should start at one date a week playing arrangement should start within thirty days.

The arbitrators who sat in this case, the exhibitor arbitrators were three Omaha exhibitors, who knew Mr. Newton, and knew all the conditions surrounding his theatre. His theatre was in Omaha. Mr. Newton is the man against whom the claim was filed. He was a theatre broker. He bought theatres and then leased them to someone else in Nebraska and Iowa. He was in that business.

One of the exhibitor arbitrators was Mr. C. E. Williams president of the Exhibitors Association. I thought you [fol. 533] might want to know that.

They set a maximum of $250 as the maximum amount that an Exchange could ask in case the award was not complied with.

The award was not complied with; and on December 31st, deposit demands were mailed by nine Film Exchanges. The deposits were not forthcoming; and on January 8th, 1927, they suspended service under these contracts.

The next exhibits in here are deposit letters. They were not taken from my files. Evidently they were secured from Mr. Newton. They did not come from our files.

The next two pages are a rep-tition of the award and notice.

Mr. Newton closed and sold. He closed his theatre, at first the Garden Theatre, after this award, and then subsequently he sold his theatre, and it has changed hands four times since Mr. Newton has been in that theatre. When I say he sold it, I mean he sold the lease. The theatre is closed at present. No one has been able to operate the theatre more than a few weeks. It is in a poor location, and there are so many other theatres near there of a much better type.

Then later on on April 6th, 1927, Metro-Goldwyn-Mayer Distributing Corporation filed a complaint against the same Mr. Newton, the Lyric Theatre at Pacific Junction, Iowa, for the completion of the contract signed by Newton personally; and the claim was heard on April 27th, 1927. And [fol. 534] an award rendered against Mr. Newton in favor of the Metro-Goldwyn-Mayer. This award called for the completion of the Metro-Goldwyn-Mayer contract the rate of one picture per week, starting May 1st, and giving the exhibitor seven days to set dates after May 1st. The exhibitor arbitrators were the same as on the other case. Three Omaha exhibitors and Mr. C. E. Williams was one of these arbitrators, the president of Omaha association.

This award was not complied with; and on May 18th deposit demands were sent out on this Metro-Goldwyn-Mayer award; and on May 28th, when the second notice should have been mailed, we received a letter from Mr. New-

ton requesting a rehearing of the case. Then on June 4th, after we had received this request for a rehearing, we received word that Mr. Newton had transferred this theatre to Mr. Burright, and we suspected that he had not actually transferred the theatre. This was proven on November 10th, 1927. There is a letter in here from the cashier of the bank at Pacific Junction. He said that Mr. Newton had always operated the theatre. Mr. Newton owns it and subleased it supposedly to Mr. Burright. He did not own any of these theatres actually.

On July 5th, the Board considered the request for a rehearing. Mr. Newton was present; and they granted his request and held a rehearing on that day. He presented all the evidence that he had and the Board sustained their [fol. 535] award made on April 25, that is the first award.

Then on July 11th, United Artists filed a complaint against this same exhibitor covering contracts for both the Garden Theatre at Omaha and the Lyric Theatre at Pacific Junction, Iowa, for four pictures amounting to $42.50. This claim was heard on July 18th, 1927, and two awards rendered in favor of the United Artists, asking that Mr. Newton be held to the terms of his United Artists contracts.

The arbitrators in this case were also three Omaha exhibitors. Mr. Williams, the president of the Association did not sit on these two United Artists cases, however.

On November 10, we received a letter from the bank at Pacific Junction, the letter to which I referred is page 98 in the exhibit. The cashier of the bank made a notation on the bottom of the page that Mr. Newton at one time turned the theatre over to Burright, but it was immediately turned back to Newton; and Mr. Burright closed his account in the bank. The cashier of the bank stated that the owner of the building had always looked to Mr. Newton for the rent of the theatre.

When we received this information and we knew that Newton was again operating the Lyric Theatre at Pacific Junction letters demanding a deposit on both Metro-Goldwyn-Mayer and United Artists awards against Mr. Newton in that territory were again mailed. That was on June 4th, [fol. 536] 1928; and the second notices were mailed June 11th, 1928. They were sent out. After that Mr. Newton used an independent product for a short time—pictures

from independent exchanges who were not members of the Board.

The theatre has been operated by a number of people since that time. I do not know how many.

That covers all the exhibits in the file except a letter I sent to Mr. Hess. This Mr. Newton has now filed a suit against the Film Board of Trade, the Omaha Film Board of Trade, and the members who suspended service to his theatre, claiming $105,000 damages; and this is my letter to Mr. Hess giving him a few of the details. The next exhibit is an outline of the theatre, a statement by his attorney, and the petition in the case. Page 39, is a letter to Miss Claire Foley, dated April 20, 1927. I have looked over that exhibit. It seems to me there is no other paper besides this page 39 that refers to other matters. I do not understand the letter myself; it was before I was there. It was written from the Des Moines Film Board at Des Moines, Iowa, and there seems to be some dispute over the contracts existing in the two exchange centers. What it is I do not know. I do not understand what the letter is at all.

Referring to Omaha, Exhibit 12, pages 1 to 7, this is about the following: F. B. O. Pictures Corporation filed a complaint against C. J. Layton, operating the Community [fol. 537] Theatre at Havens, Nebraska and received an award but he did not comply with the award and deposit demands were made. This is just preliminary. What I say is preliminary to the file. I have to tell that before I tell about this.

Universal was the only other exchange holding a contract with Mr. Layton, and they demanded a deposit. When the F. B. O. award was not complied with, and the deposit was not made by Mr. Layton, they suspended service under their contract.

Then at a later date Mr. Layton complied with the F. B. O. award and Universal asked for a completion of their contract, and Mr. Layton refused to complete the Universal Contract, so on November 7, 1927, Universal filed a complaint against Mr. Layton, asking for a completion of their contract.

Page 2 is merely the letter accompanying the complaint.

Page 3 is a letter enclosing a copy of a letter received from Mr. Layton regarding this Universal complaint. In

this letter he states that his contract expired October 31, 1926, so that he has no contract with Universal.

The complaint was heard on November 14th. It was scheduled, I mean, for November 14th, but it was heard by the Board of Arbitration on November 21st. Mr. Layton's contention was that his contract was no longer in existence, but that evidently was not true because my Board is very careful about checking up and looking into a contract to see whether or not it has expired before making an arbitration award.

[fol. 538] On November 21st, they made an award in favor of Universal, asking for completion of the contract. They set a maximum of $50. This award was not complied with and on December 10th F. B. O. Pictures Corporation demanded a deposit for the completion of their contract. Service was suspended under their contract on December 17th. The theatre was then sold to a new owner who took over the Universal contract.

The next papers in that file are evidently papers 9 to 17, which seem to refer to isolated matters. Page 9 is a letter to Miss Claire Foley, who was secretary, by Miss Benjamin, secretary of the Des Moines Board. It was a letter asking that security be demanded for contracts on a theatre of a chain of theatres owned by Mr. Ludy Boston of Muscatine, Iowa. They had enforced an award against three of his theatres and he opened a fourth theatre, and they asked for a deposit for the completion of the contract in that fourth theatre.

Page 10 is a letter to Miss Benjamin by Miss Claire Foley regarding the placing of a deposit with the Exchange, and that Exchange only serving pictures according to the playing time of that contract. That was before my time. It is no longer the policy of the Omaha Film Board to enter into anything like that. That is, a distributor and exhibitor can make any new arrangements they want to, after he has placed a deposit.

Page 11 is a letter from the Minneapolis secretary to the Omaha Film Board. Evidently it has to do with a theatre [fol. 539] that was on the arbitration list, checking up to see whether pictures were being played on contracts on deposits which were not received. I cannot say anything as to the facts in that letter, because that was before my time.

The next letter has to do with that same letter, that is, page 12; that is also from the Minneapolis secretary.

Page 13 is a letter to a member of the Film Board of Trade asking an explanation why they had served two pictures for two theatres at Waucoma, Iowa.

Page 14 is a reply stating that it was an error, in referring to the reports. This is before I was secretary. I presume that Enterprise had not received a deposit from this theatre. That is why they were checking into it.

Page 15 is a letter from Miss Lytell who was acting secretary of the Des Moines Board, addressed to Miss Claire Foley, asking how she regarded violations and how she checked and found these violations. By "violations" they are referring to selling an exhibitor who was required to pay a deposit, and selling that exhibitor without the deposit, the exhibitor holding a contract on the theatre, and being furnished pictures without a deposit.

The next, page 12, is where Miss Claire Foley replies to Miss Lytell and that is self-explanatory.

This is a case where an award was rendered against an exhibitor and he was opening up another theatre, and they wrote this exhibitor regarding this award, "as you understand, Mr. Erdwin, this award is enforceable against any [fol. 540] theatre you may operate, after this award is granted." That means only on the contracts that were in force at the time the award was granted, could a deposit demand be made. That is all there are.

There are no agreements supplementing the Rules in the Omaha Film Board. At meetings of the Board of Arbitration, they always accept the letters of exhibitors as part of the evidence. Any correspondence that might have been sent to either my office or to the office of the exhibitors' association are always presented, and considered as part of the evidence, and we always insist on the original contract, and if it is the distributor filing a claim, we always insist on seeing a copy of the availability notice sent by the distributor.

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[541] JOHN C. DOUGLAS, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I testified in the credit case. I am secretary of the Dallas Film Board of Trade. I have been there since September, 1923. I have been in the film business since November 1919. The territory covered by the Dallas Film Board of Trade is the State of Texas and a small part of southern Oklahoma and southwestern Arkansas. There are 1072 theatres in that territory. I put in all my time on my duties as secretary of the Film Board. I am secretary of the Board of Arbitration.

Motion Picture Theatre Owners of Texas names the exhibitor members of the Board of Arbitration. The offices of the Board of Arbitration are in the office of the Dallas Film Board of Trade. H. A. Cole is the president of that association. The Board meets in the offices of the Dallas Film Board of Trade every third week. Nearly 400 cases were filed with the Board of Arbitration in 1928.

The rentals of theatres in my territory range from $7.50 to $7,500 per picture, and for the same picture. Most of the complaints before the Arbitration Board are in regard to matters relating to the smaller theatres. There have been suits to restrain the awards or to modify the awards of this Board of Arbitration in Dallas, namely one suit against eight or nine distributors. That was the only suit of that [fol. 542] sort in the five years I have been secretary. The members of the Film Board of Trade of Texas abide by the Rules of Arbitration. I attend every meeting of the Film Board of Trade, and I have during these five years. Any agreements they might have would be through the Film Board of Trade and I would know of them.

These are not the complete files in regard to these matters. These first two exhibits or papers, in Plaintiff's Exhibit 10, pages 343 and 344 are the weekly arbitration lists that are sent to members, advising members of exhibitors who are in default of arbitration awards. At the top here are the names of exhibitors who are in default of awards and that service has been suspended. Down here where it says, "Dallas pending," that is the name of the exhibitors who are in default of awards and security deposits have

been demanded, but service has not been suspended. This is presumed to be more or less of an active list. You will notice there are five theatres marked "closed" but in no [fol. 543] case did these theatres close due to the exhibitor's failure to comply with the award. They voluntarily closed before service was suspended. In this list here, "justify members in requiring security in future dealing with such exhibitors." I will tell you frankly I have never analyzed those words. They are not my words. I think the home office suggested that that form of heading be applied on arbitration lists. It certainly was not the intent that these exhibitors would be restrained from entering into new contracts. It was merely a weekly reminder of the active accounts who were in default of these awards, but whose service had been suspended in cases where deposits had been requested, but the time for suspension had not arrived. I see two of them on this arbitration list, the Strand No. 2 at Houston and Monarch Theatre at Georgetown are referred to on the other exhibits, at least, in the file that I had a while ago. Those two cases have been eliminated from this exhibit, so they have no particular significance. 344 is the same form of arbitration list dated a week later. It contains several of the same names. Several have been eliminated. I think nearly half of them have been eliminated between these two dates, indicating that in that week's period, these exhibitors had complied with the awards and requests for deposits were retracted—withdrawn, I mean. A-67 is the case of the Creole Enterprise, Inc., which is the Alamo Amusement Company of San Antonio; quite a number of unplayed pictures, indicated in [fol. 544] this claim totalling $2100. A claim was presented to the exhibitor. Exhibit A-61 is the brief or history of the case which was read to the arbitrators.

The exhibitor submitted no written evidence, but was there in person. The only written evidence was a letter that the exhibitor had written to the distributor advising that he had lost money on one of the pictures he had previously paid for and wanted a reduction.

Exhibit A-64 is the award of the Board. You will notice that while the claim was filed for $2100, the award is for $1500, the Arbitration Board giving the exhibitor a reduc-

tion of $600. The exhibitor appeared in person. The award gave the exhibitor 90 days in which to play or pay for the six pictures.

Exhibit A-69 is a letter from the distributor to the Board advising that the award had not been complied with. There is quite a bit more. Other papers which would conclude this file have been eliminated.

I would like to explain that the distributor did not get $1500. This exhibitor turned the matter over to his attorneys and they threatened to take out or apply for injunctions against certain Exchanges. A Mr. Flynn came down from New York and went to San Antonio for the sole purpose of trying to adjust this award. He stayed there several days and submitted a proposition for Mr. Santikos, the [fol. 545] exhibitor, which I transmitted to the Home Office of this company at Atlanta and they finally made a compromise of the award, realizing about a thousand dollars on the $1500 award.

Now, the remainder of these papers refer to the suspension of one of our members for disregarding the Rules, and the probable infraction by another member.

Exhibit 353 is the minutes of a special meeting of February 12th. These minutes contain nothing but the roll call; there were no resolutions made. We might have a record of it. The meeting was for the purpose of discussing the San Antonio situation, meaning the action threatened by the exhibitor, the violation of our Rules by Warner Brothers, one of our members and the suspected violation by Metro, another member. In explaining the violation of Warner Brothers, they had existing contracts and had asked security and given notice of suspension, the same as other distributors; when the time for suspension came, they stated that they had percentage pictures, straight percentage pictures under contract, and they assumed the position that percentage pictures were in a different class from straight, flat, rental pictures. Being doubtful whether or not percentage pictures should be suspended, I asked the Home Office for a legal interpretation of the matter, and was informed for this purpose, percentage pictures were the same as flat rental pictures. I so informed the member, and if they desired to comply with the regulations of the Board, they should issue a suspended notice in accord-

[fol. 546] ance with the contract of notice given the exhibitor.

The distributor, however, sought local legal advice, and the advice that the distributor received from his attorney was that they should ship this percentage picture, which they did. When they did that, they were brought before the Board at the next meeting and suspended from the Board for thirty days, since it was a violation of our Rules for a member to do that.

At the same time, the Metro district manager, not entirely familiar with the territory, as he covered the entire South, went to San Antonio and took application for a picture, this application being dated subsequent to the award —and I want to stress the fact that this was over two years ago, February 1926—several members of the Board heard that Metro had gone there and accepted this new contract, and they assumed that this was in violation of the Rules, and the distributor was acting in bad faith. This was the first instance of this kind that we had ever had. I am frank to say that many of the members at that time were of the opinion that it was a violation of the Rules for a distributor to solicit new contracts after an exhibitor was in default of an award, and this matter was discussed at a special meeting of February 12th, 1926. No action was taken since there was a difference of opinion whether or not there was an infraction of the Rules. In any cases, Metro served the picture without receiving any security and [fol. 547] they served the picture long prior to the time that the exhibitor finally adjusted the award. That would not be considered an infraction of the Rules today. There should be a wire here from Mr. Hess, dated February 19th, 1926. Someone protested to Mr. Hess that the members had met at a meeting and had considered suspending Metro for this alleged violation, and Mr. Hess's wire informed us very plainly at that time, if we had passed any such resolution, it was without authority and should be rescinded at once. On the same date, I wired Mr. Hess that we understood the rule and Metro had not been suspended. On February 19, 1926, Mr. Hess wired the Board:

"Advised that at special meeting your Board held February 12th rule was made that Metro Goldwyn demands

from Palace Theatre San Antonio deposit of $500 as security for contract taken by Metro. If such rule was made it was without effect as your Board is absolutely without authority to make same and it should be immediately rescinded.

"Gabriel L. Hess."

And the Board followed Mr. Hess's instructions. Since that time, we have clearly understood, as I said, prior to that time, and this being the first instance, there was doubt in the minds of quite a few members whether or not it was an infraction of the Rules.

The aggregate rentals on the unpaid pictures on that contract as shown by Exhibit A-67, that is No. A-67 was $2100. That is what we call one of the key towns in Texas, and it is a first-class theatre, coming up to any theatre in [fol. 548] Texas at that time. That was reduced by the Arbitration Board to $1500. No amount was fixed by the Arbitration Board as the maximum which would be demanded. Our board has never fixed any amount. We rely on the members, and they are instructed to demand deposits in accordance with the Rules. That is subject to a limitation in the Arbitration Clause. Deposits that distributors could demand are based on the print costs, plus the average film rental, providing it does not exceed $500. Of course, in this case, the rental on some of these pictures was $500 and the print would be worth $200 or $300, but the most that the distributor could ask would be $500. That was the most that was asked for in this case.

Here is another exhibit relating to this case which is Exhibit 345, minutes of meeting of February 15th, where Warner Brothers were reinstated; telegrams from the Home Office of Warner Brothers to their Local Office protesting the action of the Board.

This infraction of the rules on the part of Warner Brothers prompted our president, at that time to address Mr. Albert Warner of Warner Brothers Pictures, New York (This is Exhibit 348). Mr. Underwood complained to Mr. Warner that his local manager had violated our Rules and that we should have better cooperation. This matter also prompted the membership to draft a letter which was to be

sent by the Board to every general sales manager in New York. This is Exhibit 347. This urges the general sales [fol. 549] managers and particularly district managers who come into our territory occasionally and who are not familiar with the territory, to familiarize themselves with the Rules and with the accounts in the territory.

(Adjourned to March 21st, 1929, 10:30 A. M.)

[fol. 550] New York, March 21st, 1929—10:30 A. M.

Trial Resumed

Mr. Grosvenor: We have a stipulation about part of the case, your Honor. Then I believe the Government is going to put in its exhibits finally, and after they have marked these we shall know definitely how much more there is.

The Court: All right.

Mr. Grosvenor: First, we have the stipulation, that counsel for the Government and defendants agree that the following classes of claims made by distributors against exhibitors are submitted, heard and determined by the Boards of Arbitration, and then follow two pages.

And the following classes of claims made by exhibitors against distributors are submitted, heard and determined by the Board of Arbitration.

Mr. Thompson: We are not going to have any stipulation that certain cases are typical; instead, the Government is going to introduce the minutes of the Philadelphia Joint Boards of Arbitration for the year 1928, which it is conceded are typical of operations of the Boards of Arbitration.

The Court: Will that be stipulated?

Mr. Grosvenor: Yes, sir.

The Court: Then the Government will again rest its case on that stipulation?

Mr. Thompson: After putting in these exhibits with ref- [fol. 551] erence to the various Film Boards of Trade.

The Court: I mean with the stipulation and the documents that you are now about to introduce, the Government will finally rest its prima facie case?

Mr. Thompson: Yes, your Honor.

The Court: And the testimony already taken by defendants, that is in reply to the prima facie case?

Mr. Thompson: Yes.

The Court: All right, proceed.

OFFERS IN EVIDENCE

Mr. Thompson: The Government offers as Exhibit 15, material from the files of the Buffalo Film Board of Trade, including pages 1 to 41 inclusive.

(Marked Plaintiff's Exhibit 15.)

Mr. Thompson: As Exhibit 16, material from the files of the Milwaukee Film Board of Trade, including pages 1 to 13 inclusive.

(Marked Plaintiff's Exhibit 16.)

Mr. Thompson: As Exhibit 17, material from the files of the Kansas City Film Board of Trade, including pages 1 to 65, inclusive.

(Marked Plaintiff's Exhibit 17.)

Mr. Thompson: As Exhibit 18, material from the files of the Minneapolis Film Board of Trade, including pages 1 to 8, inclusive.

(Marked Plaintiff's Exhibit 18.)

[fol. 552] Mr. Thompson: As Exhibit 19, material from the files of the Pittsburgh Film Board of Trade, including pages 1 to 28, inclusive.

(Marked Plaintiff's Exhibit 19.)

Mr. Thompson: As Exhibit 20, material from the files of the New Orleans Film Board of Trade, including pages 1 to 14, inclusive.

(Marked Plaintiff's Exhibit 20.)

Mr. Thompson: As Exhibit 21, material from the files of the Indianapolis Film Board of Trade, including pages 1 to 11, inclusive.

(Marked Plaintiff's Exhibit 21.)

Mr. Thompson: As Exhibit 22, material from the files of the St. Louis Film Board of Trade, including pages 1 to 93, inclusive.

(Marked Plaintiff's Exhibit 22.)

Mr. Thompson: As Exhibit 23, material from the files of the Cleveland Film Board of Trade, including pages 1 to 53, inclusive.

(Marked Plaintiff's Exhibit 23.)

Mr. Thompson: As Exhibit 24, material from the files of the Montana Film Board of Trade, including pages 1 to 86, inclusive.

(Marked Plaintiff's Exhibit 24.)

Mr. Thompson: As Exhibit 25, material from the Memphis Film Board of Trade, including pages 1 to 65, inclusive.

[fol. 553] (Marked Plaintiff's Exhibit 25.)

Mr. Thompson: As Exhibit 26, material from the files of the Washington, D. C., Film Board of Trade, including pages 1 to 52, inclusive.

(Marked Plaintiff's Exhibit 26.)

Mr. Thompson: As Exhibit 27, material from the files of the Chicago Film Board of Trade, including pages 1 to 5, inclusive.

(Marked Plaintiff's Exhibit 27.)

Mr. Thompson: As Exhibit 28, material from the files of the New Haven Film Board of Trade, including pages 1 to 49, inclusive.

(Marked Plaintiff's Exhibit 28.)

Mr. Thompson: As Exhibit 29, material from the files of the Albany Film Board of Trade, including pages 1 to 11, inclusive.

(Marked Plaintiff's Exhibit 29.)

Mr. Thompson: As Exhibit 30, material from the files of the Philadelphia Film Board of Trade, including pages 1 to 7, inclusive.

(Marked Plaintiff's Exhibit 30.)

Mr. Thompson: As Exhibit 31, material from the files of the Boston Film Board of Trade, including pages 1 to 18-A, inclusive.

(Marked Plaintiff's Exhibit 31.)

[fol. 554] Mr. Thompson: As Exhibit 32, material from the files of the New York Film Board of Trade, including pages 1 to 35, inclusive.

(Marked Plaintiff's Exhibit 32.)

Mr. Thompson: As Exhibit 33, material from the files of the San Francisco Film Board of Trade, including pages 1 to 44, inclusive.

(Marked Plaintiff's Exhibit 33.)

Mr. Thompson: As Exhibit 34, material from the files of the Des Moines Film Board of Trade, including pages 1 to 47, inclusive.

(Marked Plaintiff's Exhibit 34.)

Mr. Thompson: As 35, material from the files of the Los Angeles Film Board of Trade, including pages 1 to 26, inclusive.

(Marked Plaintiff's Exhibit 35.)

Mr. Thompson: As Exhibit 36, material from the files of the Home Office of the Film Boards of Trade and the offices of the Film Boards of Trade, including pages 1 to 181, inclusive.

(Marked Plaintiff's Exhibit 36.)

Mr. Thompson: As Exhibit 36-A, material from the files of the Home Office of the Film Boards of Trade and the offices of the Film Boards of Trade including pages 1 to 137, inclusive.

(Marked Plaintiff's Exhibit 36-A.)

Mr. Thompson: As Exhibit 36-B, material from the files [fol. 555] of the Home Office of the Film Boards of Trade and the offices of the Film Boards of Trade including pages 1 to 10, inclusive.

(Marked Plaintiff's Exhibit 36-B.)

Mr. Thompson: As Exhibit 36-C, material from the files of the Home Office of the Film Boards of Trade and the offices of the Film Boards of Trade including pages 1 to 164, inclusive.

(Marked Plaintiff's Exhibit 36-C.)

Mr. Thompson: As Exhibit 36-D material from the files of the Home Office of the Film Boards of Trade and the offices of the Film Boards of Trade including pages 1 to 32, inclusive.

(Marked Plaintiff's Exhibit 36-D.)

Mr. Thompson: As Exhibit 37, minutes of Film Board of Trade Convention during 1927.

(Marked Plaintiff's Exhibit 37.)

Mr. Thompson: As Exhibit 38, minutes of meetings of the Philadelphia Board of Arbitration for the year 1928.

(Marked Plaintiff's Exhibit 38.)

Mr. Thompson: Counsel for the Government and defendants agree that the following classes of claims made by the distributors against exhibitors are submitted, heard and determined by the Boards of Arbitration:

1. For breach of contract for failure to perform, request- [fol. 556] ing an award.

(a) for money damages, or

(b) directing the exhibitor to perform in accordance with the terms of the contract.

2. On account of the checks given in payment of rentals in advance of delivery of pictures, payment of which check is not made. In this classification are claims on account of checks given in payment of the rental of pictures delivered C. O. D., as well as for pictures delivered open account.

3. Claims for payment of rental of pictures delivered on open account.

4. Claims for damages for the late return of a print to distributor's Exchange or delayed delivery of a print directed to be shipped to another exhibitor, for failure to return a print to the Exchange of the distributor and for failure to deliver a print to another distributor, in accordance with the directions to do so, given by the distributor.

5. Claims for damages to a print, damaged, lost, stolen or destroyed.

6. Claims for "bicycling," "switching," and for "holding and exhibiting a picture for more days than contracted for."

In this classification of claims, prior to May 1, 1928, the distributors requested the Board of Arbitration, in fixing the amount of damages to be guided by the provisions of Section 25 of the Copyright Law, which section specifies [fol. 557] the minimum and maximum amount of damages allowed for infringement of copyright.

Since May 1, 1928, Rule 5 of the Rules of Arbitration provides for the amount of damages in this classification for claims.

7. Claims involving, as a question in dispute,

(a) The signature of the exhibitor to his application for contract, and

(b) Whether or not the exhibitor's withdrawing of his application for the contract was made subsequent to its acceptance by the distributor,

(c) Whether the agent of the exhibitor had authority to execute for the exhibitor the application for the contract.

8. Claims requiring the interpretation or construction of the contracts.

9. Claims for specific performance.

10. For non-delivery of box-office statements of percentage bookings.

The following classes of claims made by exhibitors against distributors are submitted to, heard and determined by the Boards of Arbitration:

1. For breach of contract or failure to perform, requesting an award,

(a) for money damages.

[fol. 558] 2. Claims for breach of contract,

(a) caused by missing out by distributor, and

(b) by reasons of delays in delivery by distributor.

3. Claims of breach of contract by distributor,

(a) caused by missing out resulting from failure by forwarding exhibitor to ship prints in accordance with instructions of the distributor to do so, and

(b) claims of breach of contract by distributor caused by failure of forwarding exhibitor, in not shipping print in accordance with instructions of the distributor to do so;

4. Claims for damages for violation of "protection" and/or "run" contracted for by exhibitor

5. For specific performance of provisions of "protection" and/or "run" contracted for by exhibitor;

6. For damages for breach of provisions of "protection" and/or "run" granted exhibitor.

7. Claims involving, as a question in dispute,

(a) Whether or not the distributor failed to accept the exhibitor's application within the time specified in the application, and

(b) whether or not the exhibitor's revocation of his application for a contract was effected.

[fol. 559] 8. To construe or interpret the provisions of the contract.

9. To determine questions of fact, as provided in article 21st of the Standard Exhibition Contract.

10. For damages for delivering a defective print.

Mr. Thompson: The introduction of those exhibits now completes the government's documentary evidence; and it rests its main case.

The Court: And the stipulation has been put on the record?

Mr. Thompson: The stipulation was read into the record.

The Court: And it is also stipulated, I take it, that the proofs already taken on behalf of the defendant apply as proof in respect to the prima facie case.

Mr. Grosvenor: Yes.

[fol. 560] JACK H. GREENBERG recalled.

Direct examination.

By Mr. Grosvenor:

Referring to Exhibit No. 30, page 1. It refers to the case of F. B. O. Pictures Corporation vs. The Strand Theatre at Easton, Pennsylvania. Pages 1, 2 and 3 refer to the arbitration proceedings of that case. Pages 4, 5, 6, 7 each have some reference to that matter. This file contains all the exhibits, with the exception of the complaint as filed by the distributor and notice of summons, contract and all the other matter which was introduced as evidence. Page 4 refers to still another matter; the first paragraph of that letter on page 4 refers to an entirely foreign matter. The deposits that are referred to in that first paragraph relate to something else.

The Strand Theatre is a large theatre in Easton. It is a first run theatre in the town of Easton, which is a town of about 60,000 population.

The first paragraph on page 4 refers to a case which was heard against this theatre by the Fox Film Corporation, in which there was an award rendered against the exhibitor. The exhibitor failed to comply with the award, and as a result thereof the distributors who had existing contracts demanded deposits; and the exhibitor, rather than comply with the award, placed deposits with the distributors with whom he held contracts; and they continued [fol. 561] to serve him. He subsequently complied with the Fox award; and he wrote and asked why we did not notify him that the award was complied with. He had complied with the award himself. He made mention of that fact

that his deposits had not yet been returned; and I replied to his letter on December 1st, which is on page 5, and wrote to him that we had been notified by the Fox Film Corporation that the award had been complied with, upon which we promptly notified the members of our Board that he had complied with the Arbitration Board award.

I also advised him that the contract on page 6, that the distributors who had deposits were not required to return their deposits to him until the contract was completed, unless they desired to do so. The contract provides that when an exhibitor puts up a deposit because of the exhibitor's failure to comply with an award with any distributor that distributor may retain that deposit until the completion of the contract. He got his deposits back. They were subsequently returned to him. I suppose there was some delay on account of the distributors usually having to get deposits back from their home offices.

The amount of deposit he put up of $500 was not large in comparison with his rentals. He usually pays considerably more than that for his pictures. His pictures average from $300 to probably $2,000 a week. The other matter which is referred to on page 1, being the arbitration matter, [fol. 562] he appeared before the Board. He complied with the award. That is a complete statement of the entire matter. There is nothing else that I think should be added to make this a complete statement about these transactions. These matters really speak for themselves; but I can explain the facts if you wish me to.

[fol. 563] JAMES B. FITZGERALD, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I reside in Washington, D. C. I am the secretary of the Washington Film Board of Trade. I have been secretary two years and nine months. I had experience in the film business prior to that. I started in the film business in 1917.

All my time has been devoted to it except the period of the duration of the war. I started as cashier, and from cashier to broker; from broker to office manager; office manager to salesman; cashier, booker and office manager with State Rights organization of a regional distributor; and salesman for a national organization. That completes up to my appointment as secretary in Washington, D. C. of the Film Board of Trade.

My territory is the complete District of Columbia, State of Maryland, Delaware and Virginia, and about forty per cent of West Virginia; there are between 700 and 800 theatres. There are three exhibitors organizations in that territory. The Motion Picture Theatre Owners of the District of Columbia; the Motion Picture Theatre Owners of Maryland; and the Motion Picture Theatre Owners of Virginia. The Motion Picture Theatre Owners of the District of Columbia, Maryland and Virginia appoint the exhibitor representatives to the Board of Arbitration. Each appoint [fol. 564] two, a delegate and an alternate. They have been doing that during the period that I have been secretary.

In the City of Washington all but one exhibitors there belong to the organization. There are about sixty-six theatres in the District of Columbia. The Film Board of Trade follows the rules, and in 1928 two security deposits were placed in my territory. They were Floyd Lininger of Western Port, Maryland and Piedmont, West Virginia, and J. B. Webster of the National Theatre of Martinsville, Virginia. The first case, Floyd Lininger, was a bicycling case. It was heard by the Board of Arbitration. The exhibitor appeared by counsel— by two counsel in fact. His counsel was retained by him in the State of West Virginia and local counsel in Washington. The Board, after a five hour hearing, rendered an award of $1,500, for bicycling and also for—well, the award was not rendered, but it was brought out that the exhibitor had not only bicycled the pictures, but had submitted fraudulent box office statements to the distributor. I am referring to the percentage reports. He admitted it when confronted with the evidence. What finally happened was the award was compromised for $1,000.

The other matter was a breach of contract for refusal of pictures, due to the fact that the exhibitor had contracted

for more than he was able to play. That is, that he gave away more time than he had to exhibit pictures with the result that he could not perform his contracts. The evi-
[fol. 565] dence disclosed the purpose for over-buying was as follows: There was a theatre to be re-opened in Martinsville, Virginia; and it was apparent that the exhibitor that was in the town and operating was buying up to keep away the pictures from his competitor that would be opened shortly. The result in that case was the exhibitor asked for an allocation of play dates. The exhibitor also overbought and asked for an allocation of play dates; and the allocation was not granted; so he allowed the award to be rendered against him; and when the demands were made for security he placed the security, and in that manner allocated himself. He had contracts with about ten distributors. He did not place security under all those contracts. He selected about three. He got service under these contracts. About nine months later he came in and complied with the award, and received an adjustment on those contracts which he was not serving at the time. The rentals were—the number of pictures were cut down.

The Arbitration Board in my territory does not hear cases which do not arise under the Standard Contract.

Exhibit No. 26 are some of the papers taken from my office by the government. Page 1 is the minutes of the Washington Film Board of Trade, under date of August 1, 1925, prior to the time that I was secretary of the Washington Film Board of Trade. Page 2, at column: There was considerable discussion about the failure of the member-
[fol. 566] ship, and so forth. The procedure there followed is not now observed by members of my Board. That statement apparently refers to a Credit Committee. The members of the Film Board of Trade in my territory are allowed to make contracts with exhibitors against whom arbitration awards are outstanding, new contracts, althought the awards have not been complied with. Deposit is not required on such a contract. The members of my Board follow the rules.

The last paragraph on page 2 refers to the proposition of Mrs. Thorpe at South Richmond. I was in the territory when this condition existed; and there was a condition in Richmond Virginia, where Jake. Wells owned, I believe,

all but three theatres in the City of Richmond and South Richmond. He owned the first run theatres as well as all but three of the subsequent run theatres. His contracts had called for first, a second, third, fourth and possibly fifth run, leaving Mrs. Thorpe last run. I believe that practically all pictures with the exception of a regional distributor was sold to Mr. Wells for first run; and Mrs. Thorpe was unable to get a product that she would like to have until after the Wells theatres had exhibited them.

Consequently, she was having a difficult time to obtain service for her theatre; and the matter was discussed at the Board, and from the minutes, I take it, they were attempting to find what pictures would be available for her [fol. 567] so they could book them to her. That was to help the exhibitor.

The second paragraph on page 5, relative to the New Theatre, Woodstock, Virginia—this matter occurred six weeks after I became secretary of the Washington Film Board of Trade. It concerns the bicycling of pictures by Mr. William Dalke at Edinburgh. In this particular instance, Mr. Dalke bought or leased the Pearl Theatre in Edinburgh, Virginia, and advised me that he had taken over the theatre and would keep it closed until further notice. The day on which he wrote me that letter, he had bicycled a picture into that theatre and continued the bicycling for a period of one month, at which time he was brought before the Arbitration Board and an award rendered. The evidence we had in that case was this: We had programs and the affidavits of a resident of the town of Edinburgh that he had visited the theatre each night and saw the picture exhibited in the theatre, which we claimed to have been bicycled. After he reported the theatre closed. This is the same William Dalke against whom the Board made an award in 1928. He now operates five theatres. He is building one—he is operating a new theatre in New Market, Virginia. We had controversies with Dalke in 1926 and 1928, and I just told about the 1926 controversy. In 1928, an investigation was started on William Dalke, which lasted for about three months—it was a three-months' investigation. On the complaint of the copyright Protection Bureau, and we discovered that the ex- [fol. 568] hibitor was not only bicycling pictures, he was holding over pictures. He would buy a news for one town

for the sum of two dollars and use it in three, four or five towns. He would buy a picture for one day in each of the five towns and use it two days in three of the five towns. A claim was brought before the Arbitration Board, and the exhibitor, upon being notified of the date of the hearing requested an adjournment. The adjournment was granted. On the day of the hearing he appeared by counsel, but he did not appear himself. Counsel stalled for time, moving as he stated for a better bill of particulars, and that was granted. He then raised some other technicalities, and after an hour's discussion, we went into the question, and we submitted all of our evidence, which consisted of newspaper clippings taken from the newspapers in the town in which these theatres were located, and programs which the exhibitor had printed and distributed to the people in the town, and we received an award of $4,553.

Counsel then filed a motion for a re-hearing, and we gave him an opportunity to be heard, and the Board, after possibly three hours, decided that their award rendered in July was final and they had no jurisdiction to reopen the arbitration case. The decision in each case was unanimous.

In answer to questions by the court:

The memberships in the exhibitor organizations are open to any exhibitor in the territory.

[fol. 569] In answer to questions by Mr. Grosvenor:

The last paragraph on page 5:

"The secretary called the members' attention to the Credit Committee Rules, especially to that section referring to contracts taken while the exhibitor was on the Credit Information List and suggested that members acquaint themselves with the Rules and Regulations by reading copy thereof which was in their office."

This paragraph refers to the Credit Committee Rules; Paragraph 7 of the Credit Committee Rules and instructs the members to read them and follow the rules. Page 6 and page 7 and page 8 and page 9, 10 and page 11 all refer to the same subject matter, that is, the Credit Committee, Credit Rules. No relation to arbitration.

By Mr. Thompson:

Q. Did you prepare those minutes?

A. I did not.

Q. On January 9th?

A. No, sir, I was in the hospital on January 9th.

Q. Who prepared these minutes?

A. These minutes were prepared by my assistant.

Q. You make a statement that these minutes are not correct in their statements of fact, do you not?

A. That these minutes are not correct?

Q. Yes.

A. No, I would not say that these minutes are not correct.

Q. They state the facts correctly?

A. Yes, sir, 6, 7, 8, 9, 10 and 11 refer to Credit Rules.

Q. You say on page 6, you comment here:

"F. B. O. Pictures Corporation entering *entering* into a [fol. 570] contract with the Norneck Theatre, formerly Lively Theatre, Lively, Virginia.

"The Lively Theatre, Lively, Virginia, owner H. U. Dunaway was placed on the Arbitration Information List July 8th, 1927 for failure to comply with an award rendered in favor of Metro-Goldwyn-Mayer."

Is not the clear implication to be drawn from that statement that there is criticism for taking a contract with that theatre when it was on the Arbitration Information List?

A. No, sir, that may refer here to the Arbitration Information List but the contract which F. B. O. Pictures Corporation accepted was not the contract with the exhibitor who was on the Arbitration Information List but a contract with a new owner.

Q. Was not that put in the minutes because F. B. O. manager was criticized for taking a contract with a theatre which was on the Arbitration Information List?

A. No, sir.

Q. Then he made the explanation that it was not on the Arbitration Information List?

A. He was not on the Credit Information List.

Q. Do you mean to claim that there is no object at all in having in those minutes the reference to that theatre being on the Arbitration List?

A. I do. This case had nothing to do with the Arbitration Information List.

Q. That was not the question.

A. The question in case 2 is Credit Committee and——

Q. I am asking you whether you state that there is abso- [fol. 571] lutely no reason or purpose at all for having that statement in there about the Arbitration List?

A. I do not see any particular reason for that being there, Mr. Thompson.

[fol. 572] Referring to page 13, third paragraph from the bottom,

"In any case where an Exhibitor calls an Exchange and books a picture within 72 hours of the play date thereof, that the exhibitor be advised that the Exchange will let him know shortly."

In this connection, this was brought about by the practice of an exhibitor of giving a date to an exchange on a contract and subsequently giving another date to another Exchange within a period of 24, 48 or 72 hours for the purpose of breaching his contract with another Exchange. He can come in and get a date which does not necessarily have to be designated, but he can furnish the play date himself. Then he intends to breach his contract on that picture and he goes to another distributor and gets a play date.

All those cases for which this paragraph was intended, the distributor ascertains whether or not this exhibitor is going to breach his contract by getting information as to whether or not there are any other contracts for pictures to be exhibited on that date. This was while I was in the hospital, as I say, but I read the minutes and reading this paragraph, I wrote to Mr. Hess and told Mr. Hess while I was away the Board of Governors had met and decided upon this plan. As set out in this paragraph, and I wrote to him and he replied that in his opinion it was perfectly within the law, and that the members were so justified in taking this action.

In answer to questions by the Court:

Mr. Hess's reply is not in the exhibit.

Mr. Hess: It is in another exhibit, in the large file.

[fol. 573] In answer to questions by Mr. Grosvenor:

The matter on page 14 was prior to my time as secretary. Sam Boyd was secretary then. That policy that is mentioned on page 14, that is not the policy now. Mr. Boyd was asked to resign from the Washington Film Board of Trade for permitting this. 14 and 15 relate to the same matter.

Page 16 and page 17 are the same subject matter. Mr. Abramson, of Chicago, wrote me a letter asking me the policy of the members of the Washington Film Board of Trade with reference to the request of exhibitors in spot booking pictures to avoid their contractual obligations, and I replied to him under date of August 17th, setting forth Mr. Hess's opinion to me.

Q. What is that, a bicycling case?

A. This case concerns Charles Briggs. Charles Briggs was an irresponsible unscrupulous exhibitor. He had no regard for his contracts. He has breached contracts with all members of the Washington Film Board of Trade on more than one occasion. He books four or five pictures on the same day and will refuse all but one of them, and that practice resulted in tying up the prints; ties up four or five prints on the same day, and in that manner he will keep away the print from the exhibitor who might want to use it [fol. 574] on that particular day, because he had no intention of using it himself.

He returned prints late, and in that manner would cause miss-cuts to other exhibitors, besides causing ill-feeling between the distributor and the exhibitor that was missed out. He has about 25 or 30 complaints filed against him in a year.

Mr. Thompson: If your Honor please, I wish to object to the continuation of this line of testimony. He has shown no direct knowledge of any of these facts. I do not see that it is at all material to the issues in this case to put in a lot of gossip, rumors and things like that to the detriment of the character and reputation of individuals.

Mr. Grosvenor: Your Honor, the purpose of this is this: The Government has taken isolated letters, incomplete files—there is not a complete file or statement of anything

whatsoever in any of these papers. For instance, from this office they have taken several thousand documents; they greatly cut down the files and put in one letter and here they have three or four, not complete at all; it is not a fair statement. This is the secretary who attends all the meetings and makes investigations. Certainly I cannot see how the Government, in fairness, after we let them get these papers from our own files, and after they leave out a whole [fol. 575] lot of them, and make incomplete statements, why the Government should object to our making a statement in amplification and explanation.

That was agreed to by counsel, when we consented to the introduction of this exhibit at the beginning of the case, without any objection on the ground that they were copies, or any other ground whatsoever, that we would have the right to call witnesses in amplification and explanation of any of the matters covered in the exhibits.

There is nothing here about the complaint before the Arbitration Board; the award is not here; the complaint is not here, there is no statement of the evidence, there is nothing at all except one or two letters.

The Court: Mr. Grosvenor, in this situation, I see no objection to the secretary, who is familiar with the business, stating specific facts that have come to him in the conduct of that business, but I think it is going beyond the range of permissible testimony for him to state his conclusions without even giving the source of the information on which they are based.

Mr. Grosvenor: I agree with your Honor.

The Court: I take it that is the point of Mr. Thompson's [fol. 576] objection. I will allow the answer to stand, subject to that objection and give it such weight as it is entitled to. I shall disregard general statements and conclusions.

Mr. Grosvenor: Of course.

Q. Mr. Fitzgerald, will you, in going through the file, merely state facts, as briefly as possible. Have you finished this case?

A. No, I have not finished this case.

Q. What was the result, was there an award against this gentleman?

A. There were five or six awards against him for breach of contract for bicycling pictures and for refusing pictures.

Q. Did you attend the hearings?

A. I attended the hearings, yes.

Q. Did you investigate into the matters yourself, personally?

A. No, I did not.

I have seen and read the minutes. This was done to avoid his arbitration award, and by attempting to transfer his theatre to an operator, and the operator of the theatre——

The Court: Now, just let me illustrate. You are drawing a conclusion which must be drawn by the Court, from the facts. The facts may make it very obvious, but you should [fol. 577] not draw the conclusion. You say that he was attempting to avoid his contract. The form that your testimony should take would be, that this gentleman during the course of the performance of his contract, transferred his theatre to his own operator, and then what developed, the Court may infer, although what you say you may undoubtedly sincerely believe to be the facts, but you cannot draw these inferences yourself.

[fol. 578] The Witness: And then there was a man by the name of Raymond Unger who came in and said that he was taking the theatre and Murray Gold denied that Raymond was going to take the theatre. Finally the outcome of the case was that the landlord dispossessed Charles Briggs for non-payment of rent and his son-in-law came in and took in the two theatres, one in Berkeley Springs, Virginia, and one in Hancock, Maryland, and has been operating the theatres ever since for a period of fourteen months, and the members of the Washington Board of Trade had no complaint from that theatre in those towns from that day on.

22 appears to be all by itself, 22 and 23.

Mr. Thomason: That appears to be signed by someone else.

Mr. Grosvenor: Cincinnati seems to have got in here.

The Court: That is Cincinnati, you do not know anything about that, do you? The next question, Mr. Grosvenor.

Q. Do you know whether that was from your files?

A. This was taken from my files.

I think the next matter is covered by pages 24 to the end. 24 to 52 concerns an arbitration case filed by the exhibitor, Joseph De Fiore, Broadway Theatre, Wilmington, Dela- [fol. 579] ware against Metro-Goldwyn-Mayer for violation of protection. This is an exhibitor's case for violation of protection and he asked for damages and cancellation of his entire contract. The Board rendered an award in his favor for the violation of protection, giving him $24.75 in cash, representing the money which he had expended for telegrams, registered letters, railway fares, and so forth, and in addition thereto there was a picture gratis, called "Mike" being one, and the exhibitor to select two additional pictures.

As to the concellation of the contract, the Board held that the contract was to be held in force and the breach of one picture did not constitute a breach of the entire contract and did not grant the exhibitor's request for the cancellation of the remainder of the pictures. I will see if I can find that in the files, the value of the pictures, that the distributor was directed to award gratis or give gratis.

Q. Never mind that, Mr. Fitzgerald, that is all.

Cross-examination.

By Mr. Thompson:

Q. Is that a regular rule of law, that is applied by the Arbitration Board?

The Court: I do not care for the opinion of the witness on that question.

Mr. Thompson: I mean whether they regularly held that way in similar cases?

[fol. 580] The Court: All right, you may ask that.

A. Yes, sir.

The president of the Exhibitors' Association Washington, the District of Columbia was A. Julian Brylawski. He is connected with the Stanley Company of America in the real estate department. He is a regular sitting member on the Arbitration Board. I was always under the impression that Warner Brothers controlled the Stanley. Warner Brothers control and own the Stanley; that is a matter of common knowledge from the trade papers. They also con-

trol First National Company. The First National and Warner Brothers are exchange members of my Board.

The theatre owners of the District of Columbia and Maryland and Virginia certified Mr. Julian Brylawski to be a member of the Arbitration Board for the reason that he was very familiar—

For the reason that he attends all national functions of the exhibitors throughout the United States; I believe he is either the alternate or delegate on the Contract Committee of Chicago and that he was chairman of the National Legislative Committee of the Motion Picture Theatre Owners of America.

The Court: Just a minute.

I am giving the reasons that the exhibitors gave, the Motion Picture Theatre Owners.

Q. Were there minutes of that meeting?

[fol. 581] A. The government has not produced them.

The Court: You may move to strike that out as secondary evidence or it can stand.

Mr. Thompson: I so move, your Honor.

The Court: Strike it out.

I was present at the meeting. This statement that I have made was something that was said at the meeting by the exhibitors, by Louis Rome, president of the Motion Picture Theatre Owners of Maryland; and Herman Rubin, secretary of the Motion Picture Theatre Owners of Virginia. Those gentlemen said that they wanted Mr. Julian Brylawsky to be a member of the Washington Board of Arbitration. They said they wanted Mr. Julian Brylawsky to sit on the Washington Board of Arbitration on account of his knowledge of the Standard Exhibition Contract, and on account of the assistance he would be able to render.

In answer to questions by Mr. Thompson:

The District of Columbia, I believe the so-called affiliated theatres there belong to the Exhibitors Association. Most of the theatres in the District of Columbia are owned and operated by chains managed and controlled by the producers and distributors.

Redirect examination.

By Mr. Grosvenor:

Mr. Brylawsky owns the Palace Theatre in Washington, that is the small Palace on Ninth Street; then I believe he [fol. 582] rents the Academy Theatre at Hagerstown, Maryland; and he books for the Idle Hour Theatre in Baltimore, Maryland.

These other relationships which were mentioned by Mr. Thompson were discussed at this meeting I have referred to. They were called to the attention of the exhibitors' representatives, at the time that Warner Brothers took over the Stanley Company which has only been recently. Mr. Brylawsky offered to resign. The exhibitors insisted upon him remaining; and he was certified to me as the arbitrator to represent the Motion Picture Theatre Owners by the secretary of the Motion Picture Theatre Owners of the District of Columbia.

In answer to questions by the Court:

By certified I mean that a letter was addressed to me by Nat Brown, secretary of the Motion Picture Theatre Owners of the District of Columbia, advising that at a meeting of the Motion Picture Theatre Owners of the District of Columbia Julian Brylawsky was appointed as delegate arbitrator and Sidney B. Lewis as an alternate arbitrator.

[fol. 583] Emma Abplanalp, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at Buffalo. I have been secretary since May, 1926. The territory which that Film Board of Trade covers is the western part of New York State; about 200 miles east and west and 100 miles north and south.

There are about 384 theatres. They are all sizes, and pretty prosperous, by and large. A theatre in my terri-

tory will show in the course of a year from 52 to 360 feature pictures. Each theatre does business with from eight to fourteen distributors. The compensation is pretty active. We have three exhibitors on the Arbitration Board usually, but not always, not in all cases. In some cases we had less than six arbitrators. We had two and two, by consent.

The Motion Picture Theatre Owners, Buffalo zone appoints the exhibitors' representatives. About seventy per cent of the exhibitors in my territory belong to that organization I would say.

In 1928 there were no suspensions of active accounts in my territory. There were no cash deposits made in 1928. There was one cash deposit by an exhibitor in 1927. He put up the deposit and got the picture under the contract.

Q. Was he required to put it up with all whom he was doing business?

A. He just put it up with one concern; and then later adjusted his difference with the other concern. Members [fol. 584] adjust and settle their differences both before award and after award. There is nothing to prevent them from doing it. I do not believe there were any deposits in 1926. I do not believe there were any suspensions. That is when I first came there; and I would not be definitely sure about that. I am not so sure.

The exhibitors in my territory are a high type.

Government's Exhibit 15. Referring to No. 1, that is a summary of a claim. We prepare that summary in our office. We keep that in regard to every case, so as to show the progress of the case and to have a record of it. Thirty-six pages relate to that matter.

In answer to question by the Court:

This matter was settled after they had gone to a seventh arbitrator, and before any suspension of service.

In answer to question by Mr. Grosvenor:

The Lafayette is one of the first run theatres in Buffalo. When I say a first run it buys large amounts of film, and pays large amounts of rentals. The exhibitor appeared at

the arbitration hearing. He did not have counsel at the first hearing, and he was represented at the second hearing by the chairman of the Motion Picture Theatre Owners Association, who very often represents his members. That was before the seventh arbitrator; and the seventh arbitrator decided in favor of the exchange. The seventh arbitrator was Mr. Detmers, appointed by the Chamber of [fol. 585] Commerce, who, by the way, is the chairman of the Arbitration Committee of the Chamber of Commerce of Buffalo. That is, the seventh arbitrator is the chairman of the Arbitration Committee of the Chamber of Commerce of Buffalo; and he was appointed by the president of the Chamber of Commerce to sit in this case.

The award was not complied with until the requests for cash deposits were sent out, but before any suspension of service. The award amounted to $1,775. It was finally adjusted I believe. I do not have a record of how they are settled. I believe it was adjusted. That covers pages 1 to 36.

I have here the record in the case before the Arbitration Board, word for word. It is our practice to take down a stenographic record of the testimony in all cases before the Arbitration Board, and this is a correct statement to the best of my knowledge. I followed the same practice and took down the record before the seventh arbitrator. There are fourteen pages to it in that record. I have about covered that case.

There is another matter that seems to be referred to in pages 36 to 41. That is a claim filed for advertising, $2.10 on a spot booking contract, which was heard by the Board and an award rendered in favor of the Exchange. Cash deposit letters were sent out and suspension letters, but no suspension was effective. The award was for $2.10.

That claim arose out of a spot booking contract. The [fol. 586] exhibitor in an emergency phoned the Exchange for a picture which was given him on a spot booking contract, which he gave the booker the right to send with the understanding that he would later come to the Exchange and sign a contract, which he did not do. He played the picture and paid for it, and then refused to pay for the advertising. He paid the award two days after the date

set for suspension with 210 pennies. He paid it to the Exchange.

The local Exhibitors Association always has a representative present at meetings of the Arbitration Board. Their secretary is always there and takes the minutes at the same time, and they keep a record of all the meetings. We have two stenographic records.

Cross examination.

By Mr. Thompson:

There was a period in Buffalo when the Exhibitors Association refused to participate in arbitration. We had some difficulty in a case. The exhibitors felt they were not getting a fair trial, and one of them walked out of the Board meeting.

Q. Did the whole Association feel that they had not been treated fairly and refused to participate in arbitrations?

A. Well, I could not say the whole Association. The one man that I talked to felt that way. He was chairman then. They did not appoint any exhibitor members of the Arbitration Board for two or three meetings. During that time exhibitor members were appointed by the Buffalo Chamber of Commerce at our request.

[fol. 587] X Q. This advertising matter that the theatres get from Exchanges is just bought like any other article, is it not. You do not have a contract for it.

A. Well, I believe the Board in that case felt that Clause 12 covered this, because they felt it was a breach of the understanding that the distributor had with the exhibitor to give him his valuable print without any contract, and they felt he was morally responsible. This was an exceptional case. We have not had anything else like it.

X Q. You have not had any other claims for advertising?

A. Just one other.

X Q. In that case was any contract shown for the advertising?

A. Just the spot booking. Not the advertising, but just the spot booking which includes Clause 12 covering accessories.

In answer to questions by the Court:

During this interim when the exhibitors were staying out of the organization, we tried our regular cases that came up, before a Board including an exhibitor representative designated by the Buffalo Board of Trade. There were awards rendered. Nobody questioned any of those awards in court. There were awards rendered against exhibitors during that time, and those awards were complied with. That period lasted for two or three meetings, a period of two or three weeks. We were meeting then every week. [fol. 588] Then we ironed out our differences, and they began to appoint their arbitrators, and went on as they had done before. The same men who served as exhibitors' representatives came right back. No exhibitor protested against the resumption of the old plan or its continuance, I think they were glad to resume it.

[fol. 589] Mabel M. Dietz, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Grosvenor:

I am the secretary of the Minneapolis Film Board of Trade. I have been secretary there since September 1, 1927. The territory covered by my Board is all of North Dakota; all of South Dakota; all of Minnesota; certain counties in Iowa, and the upper Peninsula of Michigan, and some counties in Wisconsin. There are about 1,200 theatres in the territory.

I am secretary of the Board of Arbitration. The Board meets every two weeks. It meets at the North Western Theatre Owners Association office. That is the Exhibitors Association. Mr. W. A. Steffes is the president of the Exhibitors Association. Mr. Steffes has been here in the courtroom during the last week or two. Mr. Steffes attends the meetings of the Board of Arbitration. He has been doing that as long as I have been there; and I think for several years before that, attending all the meetings. He represents the members of his association, of the Exhibitors Association at the meetings. The exhibitor representatives are appointed by Mr. Steffes.

Recess.

MABEL M. DIETZ resumed.

Direct examination.

By Mr. Grosvenor (continued):

My Board of Arbitration keeps a record of each case, a [fol. 590] copy of the proceedings; the decisions. A copy of that is sent to Mr. Steffes. Most of the decisions are unanimous. The average theatre in my territory uses in the course of year all the way from fifty to two hundred and fifty features.

Referring to Exhibit 18, page 1, entitled "Confidential Information," at the top of the page; that goes to all the members of the Film Board for their confidential information. It does not go to anyone else. It goes always once a week; sometimes two or three times; it all depends on the information that has accumulated in the office for their benefit. The last note on that page, Amboy, Minnesota, running over three lines on the next page. There is on page 7 of Exhibit 18 a reference to the same man in connection with this note on this bulletin. The facts about that are briefly: The first part of that note relates to Credit Committee work. He had taken over the theatre and was still on the Credit Information List. I am referring to Amboy, Minnesota, page one. The second part of it relates to arbitration. I had been in the Board just one month and was not familiar with the Rules and Regulations, and I guess I slipped up on that one. We are talking about Mr. Wendtlan. My impression at that time of the Rules and Regulations was that, regarding selling contracts, not to sell a man who was on the Arbitration List but I found out that I was in error regarding that, and I wrote to Mr. Hess and he wrote me back a letter telling me that the Exchanges were free [fol. 591] to serve persons on the Arbitration List with or without security. He told me that about two months after I had been on the Board. I went on the Board on September 1st and this letter was written in October, 1927. That is a year and a half ago. During the last year and a half, the members have followed Mr. Hess's instructions on that carefully. When there have been accounts on the Arbitration List they have been sold without security, and security has been demanded then only on existing contracts. Only on existing contracts do they demand security.

Before we leave page 7, referring to that, which is about the same matter; that theatre was a very small theatre and the exhibitor came in and talked to me and I told him that these contracts were against him and he said that he was perfectly willing to play those contracts; it was not that, but he wanted an adjustment on them, and he did go to the different exchanges that had contracts with him and made adjustments on the matter, and he got service. I mean by "made adjustments" I think some prices were cut and I think a number of pictures on the contract were cut down. That was cleared up. That is all in this file about that man.

Going back to page 3. There is reference there to Harry Weicks' State Theatre at Belle Plains, Minnesota. Mr. Weicks had bought the theatre from a man by the name of Sisterman; and Mr. Sisterman had written to the Exchanges and to the Board that Mr. Weicks would assume [fol. 592] the contracts; that he had assigned all his contracts to Mr. Weicks. Mr. Weicks refused to do this, and failed to give them play dates on those assumed contracts.

There was an arbitration case filed against Mr. Sisterman, and he notified the Metro Exchange who had filed the claim that Mr. Weicks was to complete the contracts.

The Board found that Mr. Weicks was a party to the complaint, and another complaint was filed then making Mr. Weicks co-defendant. In checking over we found that there were quite a lot of contracts involved; and the Board was of the opinion that all contracts should be allocated for the period of one year, which was done; and at the expiration of that year all contracts were cancelled. The exhibitor came in and went over this arrangement, and it was done voluntarily to help him out. I do not know whether the rental was cut down, but I know the number of pictures on the contracts was cut down. At the end of the year all the remaining pictures of the contracts were cancelled. The allocation run for just one year and cancelled at the exhibitor's request.

Q. That statement in that paragraph on page 3, "contracts antedating October 28th, 1926, are not to be given consideration;" what does that mean?

A. There were a lot of old contracts, and they decided that only the contracts that were fairly new should be con- [fol. 593] sidered; and all the previous contracts up to that time were cancelled.

Q. Was that for the benefit of the exhibitor "contracts antedating October 28th, 1926, are not to be given consideration" or was it against him?

A. I think that was very much in his favor that he did not have to play these old contracts.

Q. That is, the contracts that were older than that date were not allocated to him, is that right?

A. Yes.

[fol. 594] Page 5, that is a further note on the Henry Weicks State Theatre at Belle Plains, Minnesota case. He was allocated for the year; and it was decided in the Board that no one should go in and sell him during the time of his allocation. He had all the pictures that he could use for the year. It was at his request. He requested it because he could not pay for any more, and did not want to. He wanted to finish playing his contracts, and all his play dates were taken up. The salesmen are very active in soliciting business.

I will explain what an allocation is. The number of pictures that he had under contract were too many for him to play within the year. All the contracts were taken into the office, and each Exchange got a certain percentage of their contracts. He had more pictures contracted for then than there were play dates available for the year. The allocation reduced the number of pictures. That is what the allocation is. That is what it is for, to cut down the obligations on the contract with the exhibitor. It is done with the distributor's consent and the exhibitor's consent. It must be consented to by both parties. The whole purpose of an allocation is to help out an exhibitor.

On Page 5, there was an allocation made for Atwater, [fol. 595] Minnesota Grand Theatre prior to that time; and it was to have been allocated for a year. The former secretary only made the allocation out for three and six months at a time. At the expiration of that the exhibitor wrote in and asked me to make a further allocation to complete the year's allocation. The exhibitor wrote in and asked me to make a further allocation to complete the year's allocation.

These allocations generally relate to small exhibitors. Occasionally one who has been in the business for some time asks for it, if he finds that he has more pictures than

he can play. There are two reasons for that, for buying more pictures than they can use. Some through ignorance; some exhibitors buy more pictures than they can use through ignorance; and others to get the product away from their competitors. On an allocation the distributor does take a loss of revenue inasmuch as they lose a great many of the pictures to be played on an allocation. There is quite a loss to distributors under allocation for one year if it is cancelled out at the expiration of that year. There is no increase in the rentals of the pictures that are taken so as to make up that loss.

On page 6 there is an account there at the bottom referring to Elk Point, S. D., Florence Theatre. That was a request for security letters on the Florence Theatre at Elk Point. And award had been made in favor of one of the Omaha Exchanges; and the same is true of Webster [fol. 596] City, Iowa. We had a lot of trouble at Elk Point, South Dakota. I think it has changed hands about five times this last year in 1928. I think Mr. C. S. Bovee is the owner of the theatre. I am not sure whether he is the owner or the lessee. When I say it has been transferred, I am referring to the operation and equipment and the lease.

Refer to 8. This seems to be all by itself, an exhibit all by itself. The complete file is not here. The file is missing. This is just a solitary letter taken from the files. This was before my time that Mr. Duxbury——

I have looked up the facts. I know the facts. I have looked up the records, because it went over into my time. Some of these facts transpired later, while I was there.

In answer to questions by the Court:

This letter was written September 6, 1927. I was there at the time this letter was written. This is an account that was served out of Milwaukee territory and the Minneapolis territory; and there was an arbitration case against Mr. McLaughlin of Hixton.

He was a theatre owner. The Minneapolis Exchange sent out security letters to those who had contracts. We had been concerned because the Milwaukee Board did not do that; and this letter referred to this, and wondered why

the Milwaukee Board did not send the security letters out, and why they kept on serving him without security when there was an arbitration award against him, because Paramount had a contract, Paramount in Milwaukee had [fol. 597] a contract; and this letter to the United Artists——

I wrote to Mr. Koenig about it, and asked him if he would give me the information about this; that it was new to me. He answered and stated that he did not know that there was an arbitration award against this man. He had never been informed of it by the former secretary that there was an arbitration case against Mr. McLaughlin at Hixton.

In answer to questions by Mr. Grosvenor:

This theatre had been sold by the operator of it. Mr. Duxbury sold it to Mr. McLaughlin. Mr. McLaughlin was his brother-in-law; and he repudiated all the contracts that Mr. Duxbury had made. After this happened the contract that Vitagraph was serving—he damaged a print, destroyed a print, burned it, and an award was made in the amount of $200 for the destroyed print, and he refused to pay it. I am talking about Mr. McLaughlin, who was operating the theatre at the time this letter was sent. He refused to pay the $200; and later on he came in and said he would agree to pay the $200 if he could get some consideration on his contracts.

He had contracts with four different companies. He was running just one night a week. He asked for an allocation; and I wrote to the Milwaukee Board and asked them if they would ascertain from their Paramount manager if they were agreeable to that, inasmuch as the exhibi- [fol. 598] tor had asked for it; and they were agreeable to that, inasmuch as the exhibitor had asked for it; and they wrote me back that they were, and the allocation was made for Mr. McLaughlin. He wrote letters, he did not come in. He wrote letters asking me to allocate. He had bought more pictures than he could show. The account is all right now. I think in the last two weeks he has sold the theatre. That is all the pages there are.

Cross-examination.

By Mr. Thompson:

X Q. Were these allocations made by the Film Board or the Arbitration Board?

A. They are made by the Film Board.

X Q. The Arbitration Board has nothing to do with that?

A. They do not make the allocation, no. In some cases they make recommendations that the allocations be made.

X Q. I take it, that the Arbitration Board is not considered to have power to do it.

A. We have never questioned that.

X Q. Have you copies of a letter which you sent to Mr. Hess and of his answer in reference to that matter you referred to in the first page of the exhibit?

A. Not with me. I showed it to the Department agent, and he did not bring it. He did not put it in the file.

By Mr. Hess:

Q. When was that?

A. When I first went there. I do not know the exact date, Mr. Hess.

[fol. 599] By Mr. Thompson:

X Q. Did you send any bulletin or other notice to the members of the Minneapolis Film Board correcting that statement?

A. I read the letter that I got from Mr. Hess at one of the Film Board meetings.

X Q. Can you give any specific instances of members of the Film Board making sales to exhibitors who appeared on the Arbitration Information List?

A. Foy of Vienna. I do not know his initials. And Earl Summerville at Raymond, Minnesota, and a man by the name of——

X Q. Do you know about when——

Mr. Grosvenor: You have not let her finish.

A. (continuing) Tovias, and a man by the name of Tovias at Flasher. I do not remember. I can not give you specific names of any others.

X Q. Do you remember about when these instances took place?

A. No, I can not give that.

X Q. I mean approximately. Is it recently?

A. I would say nine months ago.

X Q. How do you happen to hear about these matters?

A. They were referred to the Film Board.

X Q. What do you mean by saying they are referred to the Film Board?

A. When it was found that these contracts were in there the distributors wrote in and asked me if they had had a contract with this man before the arbitration award was made before a claim had been filed.

[fol. 600] MARIAN G. WRENN, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am the Secretary of the Film Board of Trade of Charlotte, North Carolina. I have been secretary there since the last of June, 1927. Before that I was in the film business from April 1921 to the fall of 1925; from the fall of 1925 to June of 1927, I was treasurer of the Miami Chamber of Commerce; I was about four years at Charlotte with the First National Exchange, during which time I learned considerable about the film business in Charlotte, practically every routine in the office.

The Charlotte Film Exchange covers North and South Carolina and just a very few towns in northeastern Tennessee; that is only served by a few members. These theatres range from large theatres in the cities to the small ones. There are 585 theatres in this territory.

We have an Arbitration Board. Six members always sit on all cases. We meet twice a month. Most of the decisions are unanimous. We have never had to have a seventh arbitrator in my time. There have been no suits to set aside awards. There have been no suits confirming awards

—no litigation at all. The largest portion of my exhibitors are small.

Exhibit 9, page 1, is a letter written to me by the secre- [fol. 601] tary of the Atlanta Board in regard to service by Metro, to an exhibitor against whom there was an award. There is not a complete file in this case. There is a letter from the secretary to me, and my reply.

Q. Is there any rule against service to an exhibitor against whom there is an uncompleted award?

A. No, only on existing contracts at the time the award is given.

By the Court:

Q. On this page 1 I see: "which would indicate to us that this account should not be served until the arbitration had been complied with;" what does that mean?

A. It means this account should not be served without security until the award had been complied with.

Q. Is that the way the term is used between secretaries; do you usually leave that word out "without security"?

A. We know that is what he means when he writes that.

By Mr. Grosvenor:

Q. It does not mean there should be no service whatsoever?

A. No, sir.

Page 2 is my reply. I checked it with Metro-Goldwyn and found that they had a new booker there from Washington that had just been sent down there and he did not know that this was an old exhibitor; but thought it was a [fol. 602] new exhibitor and spot-booked him. As a matter of fact, he formerly had the theatre and had transferred it to his operator and was operating on the existing contract and they bought no new service. That matter was never taken up with Credit Committee as transferred F. T. because it was a former owner taking back his theatre; he just took back his own contracts. There had been two transfers in three months. The contracts were finally completed.

Page 3 is a letter from Mr. Fitzgerald. I do not know anything about this; that is prior to my time. This is 1926.

Page 4 refers to the same matter. Those were taken from my files.

Q. Page 5; what is that about?

A. This is also prior to my time but it is in the record and I can give you the facts. This is a letter written by an exhibitor to Mr. Pettijohn, complaining of his treatment in an award on a claim which he presented to the Charlotte Film Board of Trade.

Q. Pages 5 to the remainder of this exhibit, to page 14, does that deal with that matter or is that another matter?

A. This is one case, complete with the exception of a letter from the exhibitors to the secretary and letter from [fol. 603] the secretary.

Q. What is that complaint about?

A. A claim had been filed against the exhibitor for completion of contract. The exhibitor was summoned to the meeting, the meeting was scheduled before the Board. This was a claim by the Liberty Film Exchange. The Liberty Film Exchange withdrew their claim and notified the exhibitor, having given him five days' notice. According to his statement, he never received the notice and appeared before the Board of Arbitration and stated that he was desirous of entering his claim for expenses for coming to Charlotte, as he had received no notice of the withdrawal of the claim. The claim was presented to the Board of Arbitration and the distributor produced evidence that he had given the exhibitor five days' notice of withdrawal. Therefore the Board claimed that he was not entitled to expenses and dismissed the case.

Q. He made a statement to the Board?

A. He made a statement to the Board. Complete details were submitted to Mr. Pettijohn by both secretary and the exhibitor, and he was of the opinion that the exhibitor should have his expenses.

Mr. Thompson: I would just like to ask the witness if she knows anything about this matter except what is stated [fol. 604] in those letters and other papers.

The Witness: It was prior to my time, but I know it is according to the record, as I stated.

Mr. Thompson: I do not see how that is competent, your Honor.

The Court: Strike it out.

Mr. Grosvenor: Mr. Pettijohn paid the exhibitor, your Honor. If your Honor will note, this is the last exhibit; the Board of Arbitration decided against the exhibitor and there was a lot of correspondence about it and the exhibitor felt that he ought to get his expenses, so the Film Board sent the money from Washington.

The Court: That is all here.

Mr. Grosvenor: Yes, it is a very long correspondence [fol. 605] about a small matter.

In answer to question by the Court:

There was no award against either party, except his expenses which were voluntarily paid after the claim was made.

In answer to question by Mr. Grosvenor:

And he was asked to come in, he was summoned to this hearing and then the distributor withdrew his complaint.

The Court: I understand that.

Mr. Grosvenor: And he wanted his expenses for coming.

Mr. Thompson: There was an award on the exhibitor's complaint; the award was for expenses and the distributor withdrew his claim. The exhibitor came to Charlotte to answer his claim, so the exhibitor filed a claim for expenses.

The Court: They replied to that by saying that he had notice?

The Witness: A five-day notice, they claimed.

In answer to questions by Mr. Grosvenor:

The Board decided against the exhibitor, and Mr. Pettijohn paid the exhibitor. In regard to the appointment of the exhibitors' representatives on the Board of Arbitration, I have two boards in my territory. I do not have two Exhibitors' Associations in my territory; I have just one Exhibitors' Association, but I have two Boards of Arbi- [fol. 606] tration. The exhibitors' organization in my territory refused to sit on claims in the case of non-member hearings, so I have to have two boards. The Exhibitors Arbitration Board are appointed by the president of the

exhibitors' organization; the exhibitors on the non-member organization board are appointed by the secretary of the Chamber of Commerce.

In answer to question by the Court:

Non-members of the exhibitors' organization.

In answer to questions by Mr. Grosvenor:

So that if a case is between the distributor and exhibitor who is not a member of the exhibitors' association, the case is heard by the non-member board, with the consent or at the request of the exhibitor. There is no contention at all about it, except the members would not hear the non-member cases.

In answer to questions by the Court:

The members of the exhibitors' organization will decline to hear a case unless their members are involved. There is no objection on the part of non-members to the Board. They would not have any objection at all.

In 90 per cent of the cases they appear when they are non-members of the exhibitors' organization. If they do not appear, they answer by letter, something of that kind. If we have no answer at all, it is decided by the Board. [fol. 607] without their appearance.

Q. Is there anybody there that represents them before the Board if they do not appear?

A. Only themselves.

Q. I say, if they do not come there in person, then they have no representation?

A. No, sir.

[fol. 608] In answer to questions by Mr. Grosvenor:

Nearly every time there is a letter of explanation sent to the secretary. That is always presented with the file. The Board always requires the distributor to prove his case just the same. They must present a copy of the contract, the availability notice, all notices sent to exhibitors, and every notice of the claim and any answer to the claims. I am referring to those notices pursuant to which play dates are fixed. That is, if it is that sort of a breach. If it is a damaged print, they usually have clippings of the prints, affi-

davits and they also present the inspection card showing the condition of the print when it went to the exhibitor. We follow the rules with respect to the sending of the notices to the exhibitor.

In answer to question by the Court:

The members of the Arbitration Board that have been selected in these non-member cases are exhibitors of theatres who are not members of the Exhibitors Association, and they are appointed from a list given to the Secretary of the Chamber of Commerce who picks out these members. I give him a list of the non-members; that is the only way he has of getting it. I usually put names on the list of exhibitors within a radius of 50 miles so they can come in in a hurry. My exhibitors object to sitting unless they are paid and we have to get their expenses paid. We only have three on the Board. Three exhibitors and [fol. 609] three distributors. The secretary of the Chamber of Commerce does not pick them out each time; he takes three exhibitors who serve from time to time. I give him the names to pick from. I generally give 25 to 50, within a radius of fifty miles; those are not members of exhibitors associations. I do not give any other suggestions to him. Sometimes they are small theatre owners; sometimes they are not. I have one sitting on the Board that has operated three theatres, three small theatres, but it is in a chain.

By Mr. Grosvenor:

These 20 to 25 names you give to the Chamber of Commerce are names of exhibitors who are not affiliated with any producers or distributors. That is in compliance with the Rules. We have no exhibitors who are affiliated on this Board; just exhibitors that are non-members of the association. None of the exhibitor representatives on the Board of Arbitration are affiliated with any of the producers or distributors.

Cross-examination.

By Mr. Thompson:

This exhibitors' association that I mentioned covers North Carolina only. The affiliated theatres are members of that association. Most of the principal large theatres

in North Carolina are affiliated with some producer or distributor, I would say. The Publix Theatres and Warner Brothers have one theatre in Charlotte.

[fol. 610] Redirect examination.

By Mr. Grosvenor:

I believe 11 suspension letters on active accounts were sent out in 1928. Nine of those were sent to one circuit. This exhibitor always pays for all his service a week in advance, and the awards were settled before the week for which he had paid in advance. The circuit consists of nine theatres. He is well-to-do. The others were adjusted within a few days. Members are free to settle and adjust claims both prior to and after awards. There is no rule whatsoever that prevents a member from adjusting and settling an award. It is our desire that they should settle them, and it is done all the time.

[fol. 611] Ben Koenig, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at Milwaukee. I have been secretary seven years in May of this year. I was secretary prior to the creation of this Arbitration Plan. The territory my Film Board covers is the State of Wisconsin and the upper peninsula of Michigan. There are approximately 600 theatres in that territory. We have three exhibitor representatives sitting on the Board of Arbitration. The Motion Picture Theatre Owners of Wisconsin appoints them. The Rules of Arbitration are followed. The members are allowed to settle awards, and claims, both prior to and after awards. We encourage it. That is one of the Rules included in the Rules of Arbitration. No deposits were placed in 1928 in my district. In 1929 one has been put up. In the case of Warner Brothers against Rex Theatre Company of Sheboygan; deposits were placed with the Educational Film Exchange in the sum of $96 and with F.

B. O. Distributing Corporation in the sum of $250. The Exhibitor had contracts with more than these two distributors, and he got service under these two contracts without putting up security in the other contracts. After he put up this deposit with these two, he got pictures under those contracts. He also made a contract with other companies, namely a contract with Metro-Goldwyn-Mayer Distribut- [fol. 612] ing Company for "The trail of 98" and with World-Wide Pictures Corporation for their entire output. He did not put up deposits for those contracts. He was and is today on the uncomplied award list.

Exhibit 16, page 1, and page 2 are all there is in here. This is not a complete file. The facts about that theatre are L. C. Flynn of the Auditorium Theatre, in the year 1925 had several awards rendered against him by the Arbitration Board. That is the Auditorium Theatre of Cuba City. In view of the fact that Mr. Flynn could not possibly have placed the deposits with any of the distributors, he communicated with us and requested to be allocated. He had approximately 145 pictures under contract at the time, and he was showing them at the rate of once a week, and he closed down for a period of three or four months each year. The various distributors that had contracts with Mr. Flynn agreed to allocate his playing time and not request any deposits, on the concession being made that he would not purchase any further pictures until the existing contracts were completed. At the time the United Artists Corporation whose representative attends the meetings, but their office is located at Chicago, was apprised of these facts and it was agreeable to him. However, the United Artists Corporation, in February 1926 and June 1926, sold this exhibitor additional products and we called it to their attention, that it was a violation of the understanding at the time that this theatre was allocated. The allocation was [fol. 613] made with the exhibitor's consent. This exhibitor had contracts at the time of the allocation with about eight distributors. The exhibitor was open once a week, for part of the year. When I say 145 pictures I refer to features contracts, I am not taking into consideration comedies and other pictures. He had 145 features contracted for and was open once a week for about nine months a year.

I will state what was done in respect to these different contracts at the time of the allocation. I was present at the allocation, I was allocating the product. The exhibitor did not come in, it was left to time. He wrote to me about it, and it was full understood. He had some very old pictures under the contract and the Exchanges made the concession of giving him new product, current release product, instead of the contract he had; therefore he would not be showing old pictures. Then each exchange was to get a pro rata share of the playing time, in accordance with the number of pictures which they had under contract. I would not say they cut down 145; they gave him current release product instead of the old pictures he had. That is what he desired to have, the current pictures. There was no increase in price.

In answer to question by the Court:

This statement on page 2 "The last pro-rate day is shown as October 10" is not correct with reference to this par-[fol. 614] ticular house, we did not allocate his playing time for the entire 145 pictures, for the reason we did not know how many months he would be closed, so we gave a partial allocation; that was the last allocated date for that partial allocation; usually we put a question mark after it; it just happened that the question mark was not on the sheet at the time; it was the last pro-rata date for the allocation.

This allocation was with the consent of the exhibitor.

Q. Is there anything in the rules that the members in such case will not sell features until the allocation was completed?

A. Not unless there is a definite understanding with the exhibitor.

Q. Is there any understanding upon the part of your other members?

A. No, sir.

In this particular case, United Artists were present at the time the understanding was arrived at with this particular exhibitor and they agreed to abide by it. They were part of this agreement, with reference to Cuba City. The reason for that was there were several arbitration awards against this exhibitor which were rendered in 1925. There was a concession made to the exhibitor to go through

with this allocation because he could not possibly put up a deposit with any Exchange. He was just a telegraph operator of Cuba City. I do not recall whether United Artists [fol. 615] Corporation was one of those in whose favor the award had been rendered, but all contract holders in this meeting requested their cooperation, but United Artists was a contract holder. They took it for granted that October 10, 1926 was the last pro-rata date, because on this [fol. 616] sheet with which we have to abide, we have the allocation. I do not know whether they knew more than was on the sheet. Mr. Martin was present.

In answer to question by Mr. Grosvenor:

Page 3 is all by itself. There were other papers relating to it. In regard to that, the Eau Claire Theatre Company had operated four theatres in the city of Eau Claire and two theatres in Chippewa Falls; sold their theatres to F. & R. Circuit and continued to operate the two theatres in Chippewa Falls; and the awards were in favor of the four independent distributors in Milwaukee; all the additional distributors serving out of Milwaukee and Minneapolis were advised of these four awards in favor of the independent distributors, and deposits were placed with First National and Paramount for service at Chippewa Falls, and at the time this letter was written, it was our impression that no service could be sold without a deposit. This was in October, 1926.

By the Court:

Q. 62. This is what you said, is it not, "no new service could be sold."

A. That was my understanding at the time.

Q. 63. Why did you not say so?

A. I say until satisfactory arrangements have been made with the various distributors.

Q. 64. Why did you not say, "could not be sold without a deposit?"

A. I do not know why; it was written that way.

Mr. Grosvenor: It was from one secretary to an-ther, and [fol. 617] that is the way they use the term in the trade.

The Court: I see no evidence of that. You call one secretary who testifies that that was the usage of the trade, but

it is the plain understanding of the English language——

Mr. Grosvenor: I agree with your Honor, it is. There are two words left out.

The Court: It is strange that two secretaries should be under the same misapprehension as to the same meaning of the words they use, one from South Carolina and another one in Milwaukee.

In answer to question by Mr. Grosvenor:

Subsequent to that I received a communication from Mr. Hess with reference to the case up at Superior, Wisconsin in which he advised me that it was perfectly all right and it was just brought out in the Convention of May 1927. Several pages are taken up in the minutes of that convention with reference to this particular situation. Mr. Hess stated they could sell new service with or without deposit.

In answer to question by the Court:

Mr. Hess Statement was made in May, 1927, at the French Lick Convention. I was present. In discussing the suspension clause in the contract Mr. Hess stated to all the secretaries assembled in convention at French Lick that any [fol. 618] theatre which was on the failure-to-abide list could be sold with or without deposit; and also stated that many of you secretaries will probably be surprised to hear this, nevertheless it is a fact——

In answer to question by the Court:

He instructed us to so advise the members.

In answer to question by the Court:

He said that they could be sold with or without the deposit by the contracting members, by anybody.

In answer to question by Mr. Grosvenor:

Pages 10 to 13 relate to the same matter. That is not a complete file. It is merely the award and the allocation. This was a request by the Midwest Distributing Corporation against the Calligero & Johnson, Royal Theatre, Iron Belt, Wisconsin. This exhibitor had approximately sixty pictures under contract. There is nothing in the record at all to show how many pictures he had under contract outside of the allocation which was complete. And that is

page 12. 45 pictures besides some short subjects; and these exhibitors were open once a week and suspended for either two or three months during the year. The months are July, August and September. I do not know whether they were closed during September of 1928 or not.

In answer to question by the Court:

We covered it in the allocation, not knowing whether they [fol. 619] were going to continue, but subsequently after the allocation they discontinued, and the allocation had to be extended after February, 1929.

In answer to question by Mr. Grosvenor:

As I recall it, this exhibitor, in response to the complaint, informed the Board that he was perfectly willing to submit to an allocation of his product; and the Board made an award to that effect. I have not any knowledge of any of the contracts being cut down. I think that is the complete list of each which he had under contract. There is nothing in the rules relative to allocation. We have been instructed by New York not to enter into any allocations unless it is with the approval of all the distributors involved. It must be with the exhibitor's consent. That is necessary. As a matter of fact, in all instances it is at the request of the exhibitor that the allocation is made. The reason is usually due to the fact that the exhibitor has several contracts, and each of the distributors are demanding play dates; and in order to avoid these continuous demands on the part of distributors he is perfectly willing to submit to an allocation; and if all the distributors consent he is not bothered any further with reference to demands for play dates, or with complaints filed with the Arbitration Board for failure to play pictures in accordance with the terms of the contract. When these allocations are made the terms of the con- [fol. 620] tract are not taken into consideration. For instance, the playing of two pictures per month or four pictures per month, the contract holders if they agree to submit to an allocation, whether they are over a period of time, disregard the particular playing dates set forth in the schedule. In this particular case the exhibitor was open only once a week, and he had contracts with three different distributors, and they were all pressing him to take pictures

under their contract. The Midwest Contract was an old contract. By this consented arrangement the play dates were all assigned and divided up so that there was no more correspondence and trouble about it.

That is a description of such allocation as occurred. This is a typical allocation as set forth on pages 12 and 13. Page 12 shows how the dates are divided up among the different distributors. There never was any security notice sent to this particular individual. In connection with his award, there was no request for a deposit. This allocation arrangement was entered into for the benefit of everybody. He got his pictures, and did not make any complaint about the allocation.

Cross-examination.

By Mr. Thompson:

There is a very strong chain of theatres in my territory, the Mid-Westco Chain is one. That is a subsidiary of the Fox Film Corporation. Forty-five theatres are operated in my territory by them. That forty-five comprise a good many of the larger, good size theatres in the territory. I believe those theatres are members of the Exhibitors Association.

[fol. 621] Lola A. Gentry, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am the secretary at Los Angeles. I have been secretary there since July, 1927, and before I was secretary in Memphis, from September 1, 1926, to March, 1927. Then there was another period in which I was working for the Film Boards of Trade. There was a request from Colonel Cooper, who was in charge of the Canadian Boards, asking me to come into Canada and explain the way we were operating Credit Committees and Arbitration; and Mr. Pettijohn delegated me to go into Canada. There are six Film Boards of Trade in Canada. I went to three. I ex-

plained to them how the rules operated. While I was in Canada I had instructions from Mr. Pettijohn to come to New York preparatory to going to California.

This file, Exhibit 35, are all papers with one exception that were written before I became secretary. I do not know anything about them. The secretary during that period was Mr. A. P. Marlian. He was a lawyer. I succeeded Mr. Narlian. The circumstances under which I went to succeed Mr. Narlian are as follows: I was sent out in a supervisory capacity of the West Coast Boards. My first place to stop was Los Angeles. And I was there six weeks. I had been advised there had been difficulty between Los Angeles and the New York head office respecting the observance of the rules and regulations. I was sent out for that purpose. I have looked over this file.

[fol. 622] No incidents like these referred to in this file occurred during my term of office in Los Angeles. We are following the rules and regulations. The Department of Justice agents examined all my files since I was there. The files since July 1st, 1927 were complete in my office. The one document that I stated was written during my term of office, page 13 is the letter.

The Court: There is one on July 8th, on page 20.

The Witness: I arrived there and took charge of the Board July 1st, 1927. I was there in an advisory capacity from April for six weeks. Mr. Narlian resigned and I succeeded him July 1st, 1927.

The letter page 13 was not written by me. It was written by an assistant that was in my office who had been assigned to me by Mr. Narlian to help me during the period we were changing the entire set-up of the Board. I did not read that letter before it was sent out; I did not know anything about it. That is the only letter in this file that has been sent out during my term of office.

Mr. Narlian's resignation was requested.

In answer to question by the court:

I did not know anything about the letter of June 8th, on page 14.

[fol. 623] LOUIS NIZER, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am the secretary of the New York Film Board of Trade. I have been connected with the New York Board for three years. I have been secretary for one year.

I am not the secretary of the New York Board of Arbitration. The secretary of the Board of Arbitration of New York is the stenographer of the Board, the girl that takes the minutes acts also as secretary under the supervision of the exhibitors association. The name of the exhibitors association of New York City is the Theatre Owners Chamber of Commerce. The Board of Arbitration meets alternately in our offices, and then in the offices of the Theatre Owners Chamber of Commerce every month. When we meet in the office of the Theatre Owners Chamber of Commerce a distributor representative is chairman of the Board; but when we meet in the office of the New York Film Board of Trade an exhibitor member is chairman of the Board. We meet each week. There is a record kept of the cases. By two stenographers. We have one stenographer, and the Theatre Owners Chamber of Commerce has its stenographer; and both take minutes for their respective organizations. The Exhibitors Association is represented by counsel at all times. They have special counsel that sits in at each hearing and advises exhibitors and tries [fol. 624] cases for them, and assists in the arbitration work. Approximately 8,000 claims of all kinds and nature were filed with the New York Board of Arbitration during the year 1928. Approximately 5,000 of the 8,000 were settled prior to arbitration. That is the policy of the exhibitors and distributors. We encourage the amicable adjustment of all claims filed even without arbitration if it is possible. That is in accordance with Rule 3, paragraph 1 of the Rules of Arbitration and good business tactics, and sound judgment of the exhibitors and distributors in the territory.

The Theatre Owners Chamber of Commerce has cooperated in arbitration for many years. It is one of the

oldest exhibitor organizations in the country. Arbitration existed in New York in a rough way even prior to the organization of the Film Boards of Trade; but I do not believe it was effective or as fair as it is now.

There are always three exhibitors and three distributors on the Board. The parties are permitted under the rules to challenge; as a matter of fact, the rules in that regard are very liberally interpreted. If any member, any party to the litigation or the representative of the Theatre Owners Chamber of Commerce feels that some member ought not to sit, regardless of the amount of challenges they have used up, that member immediately withdraws, and no objection is made to an additional challenge; so that our experience shows that very, very few challenges are made at all, because the arbitrators are of great repute [fol. 625] and above the objection of any of the litigants that come before them.

99 per cent of the decisions are unanimous. Of the one per cent that are not unanimous as often as not an exhibitor is on the distributors' side of the vote and a distributor is on the exhibitors' side of the vote. We have had several cases in which there was a seventh arbitrator. Some of the gentlemen served as seventh arbitrators in contested cases are Justice Schmuck, now of the Supreme Court of the State of New York; Judge Lauer, presiding justice of the Municipal Court; Judge Valente of the Supreme Court of the State of New York, and several other judges. I am not certain that I can remember their names. There have been very, very few seventh arbitrator cases in the last few years.

The territory my Film Board of Trade covers is the City of New York and the State of New York as far up, I believe, as Kingston. Long Island, Brooklyn, and the northern part of New Jersey as far south as Trenton. There are approximately 1,300 theatres in this territory. They are small as well as large theatres; very small theatres; then of course very large theatres, but generally the exhibitors are well-to-do and they have their own counsel each time at these hearings. Almost all exhibitors in this territory are represented by counsel, who take care of their matters on an annual basis. They come before the Arbitration Board or any other dispute.

The range in the numbers of pictures shown by theatres [fol. 626] in this territory is from fifty to 350 pictures a year, depending upon the size of the theatre, and the location, and how many changes are necessitated by the business policy that the neighborhood dictates. A theatre will do business with from eight or ten distributors. Eight or ten, I would say is an approximate average. There are over twenty-five distributors that they may do business with, and sometimes do.

The procedure that the Board follows in New York is: The claim is filed in a very simple manner. It has been so simplified that any exhibitor even if he was illiterate could file a claim. All he has to do is write a letter stating in ordinary language the nature of his complaint, sometimes only ten lines. He sends that letter to our office, and we make a copy of it, and forward it to the distributor. Notice is sent to him, and eventually the claim appears upon the calendar, after it has been given due notice. When the case appears upon the calendar if answered—there are an average of two hundred cases upon the calendar. They may average from 150 to 350. The cases are all called, the calendar is marked either "ready," "adjourned," "settled," "withdrawn," or if it is a request for an adjournment or any other unusual request it is marked for executive session to be heard by the Board in executive chambers.

The public is invited; and usually there are many people who come up to listen to arbitration hearings, either [fol. 627] professors of law schools or students of arbitration, and other people who are interested. They are always invited.

After the calendar is called the Board listens to applications for adjournments; and it is the policy that adjournment is always granted at the first request. At the second and third request it is usually granted. After that is is frequently granted if there is any reason. The Board is very liberal in that respect.

Those cases which are marked "ready" are then called in the regular manner. The exhibitor usually appears by counsel or may present his case himself. The distributor usually appears by the manager of the Exchange, or in an exceptional case by an attorney.

The method of adducing proof is very simple. If the distributor's claim is being presented, the distributor offers his contract in evidence, notice of availability and assignment to use it. That is the usual claim for failure to lift pictures.

The exhibitor is then heard. He can make an informal statement. Either side may produce any witnesses they wish. The arbitrators are sworn to do their duty, and the witnesses are usually sworn. It is our custom to do so. There is no technical procedure in the receipt of evidence. Almost anything is received, and the arbitrators consider it later as to the validity and the weight it should have. If [fol. 628] the exhibitor wishes to sum up he is given that opportunity to, and so is the distributor. The proceeding is informal and is conducted along business lines. The main object being to get at all the facts as quickly as possible, although there are sessions that take as long as five or six hours, no matter how small the amount may be, because the arbitrators are anxious to hear all the facts in the dispute.

Then when the case is closed the parties are asked to retire. The chairman asks for discussion by the other arbitrators, and a very careful and considerate discussion is had, and the exhibits carefully looked over; and finally when a decision is reached it is dictated to both stenographers, the distributors' representative who takes notes, and the exhibitors' representative who takes notes; and the parties are called in immediately and the decision is announced.

Usually half an hour or an hour after the submission the Board have completed their decision and the decision is announced immediately in the presence of the parties. The purpose of that is so that if there is any serious objection or any new fact which the exhibitor thought he has left out he will be given a last moment opportunity to say so. Then the parties leave, and the next case is heard, and the same procedure is followed.

The calendar is usually up to date, and never more than a week behind, and not even that. We have special hearings at times called on twenty-four hours' notice; and in [fol. 629] one case on ten hours' notice. That case was where an exhibitor complained that the distributor because he had been made a lucrative offer by some chain of the-

atres wished to take away a picture which he was about to get. He simply called us up on the phone, and without even having an opportunity to submit a complaint in writing, we immediately formed the Board and the case was heard; and an injunction order, so-called, was handed down, directing the distributor to deliver the picture to that exhibitor and the distributor did.

Even in such unusual cases the exhibitor is not required to file any bond or put up any security or do anything except state his complaint; and no distributor has ever failed to live up to the decision of the Board, no matter how onerous it may have seemed to him.

Approximately 5,000 of these 8,000 cases are settled prior to arbitration. The policy of the industry in that regard is the exhibitors very frequently come to our office to ask for advice or favors or concessions, or to ask for relief. They are cordially invited to our office for those purposes; and as many as fifty to one hundred exhibitors sometimes will appear in one day with various requests at our office. They are always courteously listened to, and we make every effort to assist them if they think there is any justification to their complaints.

In several instances we have gone so far as to go direct [fol. 630] to the president of the large distributors to get relief. I remember one incident where we wrote to Mr. William Fox himself to get the Roxy Theatre to release some production they had in order to afford some relief to an exhibitor.

The policy of our office is to make easier the relationship between the exhibitors and the distributors; and not merely to represent the distributors. The exhibitors evidence their satisfaction with that system by coming in great numbers to our offices where they receive relief; and when they go to the Exhibitors Association offices they are usually sent to me after they have had an interview there; and that results in the policy of settling an adjustment even without arbitration; and it often results in the fact that most cases in which the distributor might have committed a wrong are avoided before he commits it. In other words, the very existence of the arbitration machinery prevents cases from coming to the Board, and the exhibitor obtains his relief outside of the Board more frequently than he does inside of the Board.

There were 2700 defaults in the last year. The procedure is for the secretary to mark the calendar with "default" when the distributor answers ready and the exhibitor fails to answer "ready." The exhibitors association counsel and representatives has the calendar; and usually the exhibitor is there and answers "defaulted." He is present [fol. 631] but he has no defense; and our default cases arise, not out of the fact that the exhibitor has not had an opportunity or has failed to present a defense, but they arise out of the fact that he has no defense; he has failed to take a picture which is available to him; and he is merely availing himself of the machinery to get even with his dates. After the default is noted he gets seven days' notice; then seven days further suspension notice to be sent out; and after that our records will show that he receives three or four extensions and as many as fifteen extensions after that. It is a fact that in ninety per cent of the default cases even after the default is noted, and the suspension date has gone around the exhibitor receives from three to five further extensions of time before the suspension is put into effect; and eventually very, very few suspensions are put into effect. Our records show that.

The procedure of taking a default is simply the requirement that the distributor show he has the elementary facts to entitle him to bring a claim. He has got to present his contract in evidence; and the date is looked at to see that it has not expired. I am present at every hearing.

In answer to questions by Mr. Thompson:

I am not always present when this procedure of taking evidence on the default is gone through with, because those are had in another room, and sometimes I remain in the main chamber; but I have directed the taking of defaults. [fol. 632] They are done according to certain policies and rules which I am trying to explain, and I have seen it done hundreds of times.

In answer to questions by Mr. Grosvenor:

I am the officer in charge of the office. The system in the office in respect to these defaults is the distributor presents his written contract; and he presents the other evi-

dence of his claim, such as the notice of availability, and notice of assignment.

If it is a damaged print he usually brings up the print, or produces the card showing that the print went out in good condition and came back in bad condition according to the Examiner. The default is then noted, it merely being a stamp to the effect that the distributor has presented his claim, and that the exhibitor has failed to appear, and the default is noted. We have that system because if the Board had to listen to all the default cases we would have to sit a week instead of a day; there being so many cases that come up in the New York territory.

The exhibitors' organization appoints its representative to listen to these defaults; and the man who used to listen to them was the president of the organization, Mr. Raives, when he did not act as arbitrator. Finally they requested that they be relieved of that burden; and that the secretary could just as well mark the various papers and examine [fol. 633] them; and in view of the fact that any exhibitor against whom a default has been noted can open the default upon merely requesting in writing, it was not thought necessary to have an exhibitor representative present, although they are invited, and sometimes sit even today.

Out of these settlements and uncontested cases, 202 trials came before the Board of Arbitration in 1928. Twenty-three notices of suspensions were sent in 1928 involving about five or perhaps eight exhibitors, I am not certain. There were several awards against each of those exhibitors. None of those put up security. None of these exhibitors closed their theatres because of this suspension notice. I know that fact because in each of those cases the exhibitors finally paid, and have continued to do business; and also because of the fact that if a theatre is closed we receive notice of it, and we keep a record of that; and in none of those cases has a theatre closed.

Q. Where do they get pictures from in that interval?

A. They either bought them from distributors who are not members of the New York Film Board of Trade, or obtained new contracts from some of our own members or settled eventually.

Of these four or five cases, the awards have all been complied with up to this time, I am quite certain.

[fol. 634] I was here this morning when Mr. Fitzgerald testified. I am familiar with that Dalke case which happened down in his territory, that bicycling case. I repre-

[fol. 635] sented the distributors in the presentation of that case before the Washington Board. Mr. Dalke was represented before the Washington Board by two attorneys, I believe Mr. Boyd and a former judge of West Virginia. Mr. Dalke afterwards admitted the bicycling to me personally. He came to talk to me at my office after the case, and offered to settle for $2,500, conceding that he had committed a violation, but claimed that the case was not as bad as it looked to us; and we refused that settlement because we felt the award of $4,500 was entirely inadequate.

In answer to question by the Court:

I am an attorney.

In answer to questions by Mr. Grosvenor:

I am a graduate of Columbia Law School.

Arbitration was going on many years in New York before I came there, but I do not know exactly how many. But the effect of arbitration now is to afford the exhibitor and distributor an immediate opportunity to adjust their differences without expense, without undue expense; and without any filing fees or attorneys' fees usually. The very existence of the system prevents the wrongs which formerly may have existed. It affords an opportunity to an exhibitor — even get an injunction without the filing of a bond or the retainer of an attorney in some cases. The thing above all that is of advantage to both exhibitor and distributor is that whatever decision is made is made speedily enough

[fol. 636] so that the advantages of it can be received and the effects not lost by virtue of the length of the time that it takes in which decisions might be arrived at by other methods.

It also causes good feeling between the exhibitor and the distributor. There is very little bitterness left after arbitration. Usually the exhibitor and distributor always thank the Board for the courtesy and attention they gave them; and there is no feeling that an injustice has been

done in any case of the 16,000 that I have personally observed. In no case have I received any complaint from either side that an objectionable error was committed. There may be displeasure as to the extent of the award, or its nature in general, but never is there a bitter feeling that an injustice, an outright injustice, has been done.

Q. Have any lawsuits been brought under the Arbitration Act during your term to set aside or modify an award?

A. No, sir.

Q. Have some actions been brought to enforce an award?

A. Yes. On the contrary in several cases where the Board may not have had jurisdiction because the question involved was whether there was a contract or not, the exhibitors and distributors agreed to submit it to the Board for final determination, and asked the Board to please accept jurisdiction and decide the matter.

Q. You are now referring to cases that come under this classification of validity of contracts?

A. Yes. As to whether there was ever a proper signa- [fol. 637] ture on the contract.

Q. Do you know whether anything was ever collected on those actions to enforce the awards, or if you do not know, say so.

A. I do not think there was. I am pretty sure there was not. Judgments were obtained but I do not think there was any property upon which to execute.

[fol. 638] The distributors are members of the Film Board of Trade. Their relations with each other in New York are through the Film Board of Trade. I attend all the meetings of the members of these Film Boards of Trade, and I have during that period of time. They never mention to each other the contracts they have with various exhibitors.

In answer to questions by the Court:

At the meetings I know that they do not, sir. I also meet them in private, and have had luncheons with a few at a time, and know how they guard information against each other, even through me

In answer to questions by Mr. Grosvenor:

When a theatre is sold in this territory, I make up a list of the contracts the old owner had. We receive such in-

formation within a few days after the transfer has occurred. We do not have such information in our office at the time of the transfer. We ask the distributors to send us lists of pictures unlisted at this theatre because it has been transferred. Then they send us such lists, and until that is done we have no information.

The Government examined the records of 16,000 cases, I believe. They had in my office at one time one, and then [fol. 639] two men, and then four men there for I believe a period of four weeks or more.

Exhibit 32 contains some of the papers they took from my office. There are 35 pages. They took several thousand sheets after examining 16,000 cases. They took my original papers.

"Allocation" in the film business means: When an exhibitor finds himself in distress either because he has too many pictures, more pictures than he can use, or because the prices are too high, he requests all the film companies to meet, and places the facts before them, and asks for relief. It is really a sort of creditors' conference in the film business.

Up to some time ago they used to make the request to all the film companies; and the film companies used to send their representatives to the office of the Film Board of Trade, where the exhibitor would appear in their presence and state the facts, and produce any evidence he had, usually his books, to show he was in distress; and the film companies right in his presence would make either a cut in the amount of pictures on his contracts or in the prices in his contracts in order to assist him. Usually they could agree upon a uniform rate of, say, 25 per cent reduction from that.

There was a feeling among some of the distributors that this was unfair to them, this method of allocation, and was abused, because they became frequent, these meetings be- [fol. 640] came very frequent; and some distributors thought it was unfair that they should have to cut their contracts, which might be very reasonable because some other company had obtained a high contract; and as a result of that feeling general sales managers' conferences were held; and a letter was sent by Mr. Hess to all the secretaries—I received one—to the effect that the general sales managers

had instructed their branch managers not to meet at the Film Boards of Trade in general conferences with exhibitors for this purpose: That if an exhibitor wanted relief he could come to the managers at their office, and the managers could use their individual discretion as to whether they wanted to grant such relief or not. In that way they thought no pressure would be put upon the individual manager as a result of the presence or pressure of others.

Since that letter was sent by Mr. Hess the method that we follow in New York is this: The exhibitor comes to my office, and presents all the proof he has, his books, and whatever other statements he has, and sometimes we have an investigator check those records up, and whatever finding we make we bulletin in our confidential bulletin to all the members, recommending a 25 per cent cut in price or number of pictures; then the exhibitor goes to each manager individually, sometimes with a representative of my office who helps to smooth the way; and each manager acts in his own [fol. 641] discretion upon that recommendation in the bulletin. The fact is that almost always some relief is granted where the bulletin recomemnds it; and usually the relief is such as the bulletin has recommended. In the last year tens of thousands of dollars of contracts have been voluntarily cut by the distributors in the New York territory pursuant to the recommendations made in this bulletin. That is the way the allocation s-stem is operating in New York.

These cases and claims that are filed with the Board I referred to yesterday range between a few dollars to $30,000 and $40,000. I think we have had several cases. Those are rare.

Cross-examination.

By Mr. Thompson:

I have gone over that file of the New York Film Board that has been introduced in evidence.

XQ. Were those awards in that file typical of the awards rendered by the Board?

A. Well, there is only one award in this file that I know of, Mr. Thompson.

There are two defaults. Those default cases are not typical—well, there are three defaults. One of them is on

page 23 and is a typical default case on a N. C. note. That note was given in payment for service rendered under a contract. The exhibitor involved was one of the largest independent unaffiliated circuits in New York City consisting of about thirty-five theatres. The exhibitor did not appear and defaulted. Subsequent to his default there were [fol. 642] extensions for eleven weeks. The default was noted on October 17, 1928, and final payment was made January 9th, 1929; so that he had eleven weeks after his default to make good on this bad note. That case is typical of an N. G. note.

We do not have many cases on notes. Our annual chart would show that. There are not many, but this is typical of that class of case.

Then there are two defaults noted, which are not typical. They are the only two of a kind that I believe have ever occurred in New York. Those occur on pages 13 and 14 and subsequent pages. One was for $15 and the other was for $260; and the unusual feature of these two cases is that after an adjournment was requested by the exhibitor and granted, and he failed to appear at the second hearing, and requested another adjournment, the Board granted the adjournment conditionally upon his depositing $15 in one case, and $260 in the other case as security with the Board. In other words, the Board's permission to open the default was conditional upon his placing that amount of money involved in the dispute with the Board. The reason for that was the Board felt there was no defense whatsoever; but these are the only two cases in which the Board has ever granted a request to open a default conditionally. They are always opened without any question. These two cases occurred in 1927.

In answer to questions by the Court:

A request to open a default is never denied because it is [fol. 643] just as speedy to have them come in and hear it in half an hour than have them come in and hear more applications. In an ordinary default case it would take about twenty minutes to hear it. If it is an important dispute, of course, it is not denied. They want to give him his day in court.

By Mr. Thompson:

X Q. This method of noting defaults as shown on those awards is typical, is it not, of default cases?

A. Yes, sir.

X Q. I take it from your evidence, that your Board does not strictly follow the rules with reference to sending out demands for cash security and for suspending service?

A. I believe they do.

X Q. I thought you testified that in most cases nothing is done anywheres from one to eleven weeks.

A. No, the demand for security is sent out in the regular way, but the suspension date is extended for many weeks. That is the usual feature. The way they operate is this:

An exhibitor calls up either the Exchange or my office and says, "I will try to straighten that out in a week or two. Can you give me an extension?" They are liberally granted, because the distributor is anxious to retain the good will of his customer, and we are anxious to assist in that respect.

X Q. Then, you regularly follow the first steps described [fol. 644] by the Rules for Arbitration?

A. We do.

X Q. And send out these security deposit letters?

A. That is right.

X Q. But you say usually the suspension letters do not go out in the described time?

A. No, extensions are granted upon request usually.

[fol. 645] Beverly Schofield, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at St. Louis. I have been secretary there about ten years. I was secretary before the Arbitration Plan.

The Exhibitors Association appoints the exhibitor representatives on the Board of Arbitration. The exhibitors in

my territory support the Plan. There are no complaints. They bring claims before the Board. I was there several years before this Plan was started and constructed. Before the Arbitration Plan was established the conditions were very peculiar and very much disorganized. The exhibitors and distributors seemed to have more or less ill-feeling toward each other.

The distributors had their own contracts; their own special clauses; and the contracts were taken presumably to be broken by either party. That seemed to be about the way it resulted. The distributors demanded advance deposits; and the distributors would arbitrarily cancel their contracts. The exhibitor had no protection on his play dates; and no protection on his contracts. The distributors had no knowledge of the exhibitor as to his credit; and it was all very much disorganized. They finally organized the Film Board [fol. 646] of Trade, and heard these complaints and grievances. The entire body heard the complaints. I am speaking of the period antedating the Arbitration Plan. Finally, they appointed a Grievance Committee, and they would hear the complaints of the members of the Board, and they would all decide to suspend service. Sometimes the exhibitor got a notice, and sometimes he did not. The service just failed to arrive. They went along that way for several years, but it was not very satisfactory at that; and then the Hoy System was established for a short time.

Then finally the Hays organization was organized; and an Arbitration System was put into effect, and then a complete revolution resulted. A revolution. It seemed like the industry settled and became stabilized, and since then there has been steady improvement.

The plan has improved the good will of the industry. There has been a time within the last few years when the members in St. Louis—that is, the members of my Board have asked deposits on new contracts of exhibitors against whom uncomplied awards were pending. That practice is not in force now. It was abandoned some time last year; the middle of last year, I would say. Competition is very active between the distributors in my territory.

[fol. 647] JOSEPH E. ABRAMSON, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am Secretary at Chicago. There is an exhibitors Association there. The business manager of the Chicago Exhibitors Association appoints the exhibitor representatives on the Board of Arbitration. The hearings of the Board of Arbitration are held in the Chicago Film Board of Trade offices. The Exhibitors Association have a representative present at all meetings. The exhibitors support the arbitration plan in my territory. They have been doing that seven years that I know of. There have been no lawsuits to restrain awards in my territory or modify or amend them.

Cross-examination.

By Mr. Thompson:

The so-called affiliated theatres are members of the Association in Chicago. Balaban & Katz are the affiliated theatres. I think they control and operate most of the principal theatres in Chicago.

There is only one association in existence today, that is, the Chicago Exhibitors Association. My Film Board matters cover a larger territory than the city of Chicago. The exhibitors in the rest of the territory outside of Chicago are organized in the sense that if they wish to join the Chicago [fol. 648] Exhibitors Association, they may do so and obtain representation there in that organization through,—there used to be an Illinois Motion Picture Theatre Owners Association, but it is now absorbed into the Chicago Exhibitors Association, as I understand it. Quite a few theatres outside of Chicago belong to the Chicago Association. I do not know how many.

[fol. 649] LOUIS PHILLIPS, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am a lawyer. I am associated with Paramount Famous Players Lasky Corporation. I have been secretary of the Film Board of Trade. I was secretary about five years, up to January 1, 1928. Mr. Nizer was my assistant prior to his appointment as secretary. During those years, I was secretary and these thousands of cases were decided by the Board, one suit was brought to restrain an award. Many were brought to enforce the awards, but only one to restrain or modify an award.

That was heard in White Plains before Mr. Justice Tompkins. An exhibitor, I forget his name offhand, operated two theatres, one in Bedford Hills, New York, and the other in a little town nearby. He had been in the habit of switching pictures from one theatre to another and this exhibitor was charged with switching films from one theatre, between Mt. Kisco—*that is the other town—and* Bedford Hills in at least 46 instances. Claims were filed by the various distributors on those claims, and he came in and was represented by a nephew. The case was tried before the Arbitration Board for five consecutive days, during which time the complainants adduced their proof.

All of them were subjected to cross-examination, a very [fol. 650] lengthy cross-examination, and at the close of the case, the exhibitor did not take the stand, after contesting the case for five days, and an award resulted in the sum of $2500; a security was demanded after the failure to comply with the award, and the exhibitor then claimed and notified us he had transferred his theatre to his nephew, a Mr. Bernstein. This Mr. Bernstein is the man who appeared for the exhibitor to try the case. Mr. Bernstein applied for an injunction pendente lite in White Plains; the matter came on for hearing before Mr. Justice Tompkins and the application for injunction was denied. The award was never paid. Nothing was collected on the award. That ended the litigation.

In answer to question by the Court:

The injunction was not to prohibit the distributors from refusing the deal with the nephew. It was our contention that this nephew was a dummy. He claimed service under

the contracts of his predecessor, his uncle, and he wanted service under those existing contracts, as the assignee of his uncle and it was our contention that he was merely a dummy and that he dealt with his uncle, his predecessor, with full knowledge of all the facts that were brought before the Arbitration Board. He was seeking to enjoin the payment of security under existing contracts.

In answer to questions by Mr. Grosvenor:

I heard Mr. Nizer's testimony. I agree with what he [fol. 651] stated about arbitration. The rules were followed the way he described, during my term. The effects of arbitration, as I believe it to be, in the film business in New York City are: It has stabilized the business; it has permitted of a method of quickly and inexpensively adjudicating difference that arise between business men, without resort to litigation, sometimes expensive, and affords a quick machinery of determining all matters in dispute in *the industry by men who know* most about it.

As Mr. Nizer testified, it is not infrequent that we would call a Board together on 24 hours notice, and sometimes less, at the instance usually in these cases of the exhibitor, to afford the exhibitor some relief, in order to prevent an irreparable injury to him, arising out of an anticipatory breach, where the exhibitor was apprehensive that the distributor would not make delivery of a picture to him within the next day or two. The exhibitor had booked and advertised for exhibition some certain picture, and where there had been a threatened violation of "run" or "protection," so the Board would be hastily summoned to convene at the instance of the exhibitor, to afford the exhibitor relief if the facts entitled such exhibitor to relief.

During my term of office, my organization cooperated with the exhibitors organization. The exhibitors always had representatives. They had arbitrators at every session of the Board. They always had counsel present at [fol. 652] the Board meetings. Counsel frequently tried cases for exhibitors who were members of the Association and very often, even if they were not members of the Association, counsel always looked out for the interests of every exhibitor who appeared before the Board.

About fifteen per cent of the revenue derived from the licensing of motion pictures to exhibitors is derived from the New York territory, which comprises the State of New York as far north as Kingston and the State of New Jersey as far South but not including the city of Trenton. It is called a fifteen per cent territory.

When I say the arbitration plan stabilized the industry, I mean contracts that are entered into, the distributors feel as though they have a fair chance of having the exhibitor live up to his contract. The exhibitor has the same right to expect that the distributor will live up to his contract, which was not the case prior to the event of the Uniform and Standard Exhibition Contracts. In that sense, it has stabilized the business. Prior to the Uniform Contract, contracts were flagrantly disregarded and not considered anything more than a scrap of paper. The competition of these distributors in this territory has always been most active; there has always been very active competition.

Q. Did the arbitration plan have any effect in diminishing that competition?

A. Competition is as keen today as it ever was.

There are 25 or 26 distributors in this territory. There [fol. 653] are some so-called regional distributors here that do business in this territory that do not do business throughout the country. There are quite a number of regional distributors here and there.

[fol. 654] Darrell T. Lane, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at Salt Lake City. I have been secretary there since the first day of October, 1925. I am a lawyer. The territory covered by my Board is as follows: Out of Salt Lake they serve motion pictures—sell motion pictures, distribute them in the State of Utah, the State of Idaho, the State of Montana, a few places in Eastern

Washington, a few places in Eastern Oregon, some places in the Eastern half of Nevada, one or two towns in Arizona, two or three towns in New Mexico, a few places in Western Colorado, some places in Wyoming and two or three towns in the State of North Dakota. I overlap with seven other Film Boards.

The exhibitors in this large territory co-operate in the arbitration work very much. I do not recall any complaints by the exhibitors. There were one or two cases where the distributors growled a little that the awards rendered by the arbitrators were not right. They felt perhaps that the arbitrators had not rendered awards as they felt they should have been rendered.

Because of the overlapping it is very difficult to give accurately the number of theatres; we carry our list at 751 accounts.

[fol. 655] There has been a period in the last few years when the members asked security on new contracts from exhibitors who have not complied with awards. Frankly, I had the idea, and I think my members had the idea that they were compelled to ask security on all contracts from exhibitors who had not complied with the previous awards. That condition continued until a short time after the French Lick convention at which time I found out for the first time that that was not the system that should be used, nor was it permissible. I think it was in September or October, 1927, when that finally got through my head it could not be done, and it was immediately thereafter discontinued.

Q. How many awards against active accounts did you have in 1928 which were uncomplied with and where there was a deposit put up?

A. One.

Q. There was one; now, how many contracts did this person have?

A. Well, he had several; I do not know how many, but he put up a deposit with two companies and is still operating, and by the way, that is referred to in these exhibits.

Q. It was not necessary for him to put up deposits in each contract he had in order to get pictures under any one of them, was it?

A. He is still operating today under various contracts, that he saw fit to put up security deposits for, in order to obtain those pictures.

Q. He did not put up a security under all of them?

A. He certainly did not.

[fol. 656] Q. What is the name of that exhibitor?

A. His name is Richard Roberts; he operates the Onyx Theatre in Cokeville, Wyoming.

A master booker is the way we used to use the term in Utah, in connection with allocating play dates. A exhibitor has more contracts than he has playing time, because of the desire on the part of many of the distributors to [fol. 657] get their contracts completed, and the impossibility of it at the moment as per the schedule and the exhibitor, in the past, has made application for allocation of playing time. In Salt Lake City the practice was to designate one of the employees of one of the distributor exchanges, preferably a booker, and they named him a master booker, and they entered into an agreement at the instance of the exhibitor, which usually was a written agreement, in which the exhibitor agreed to comply with the booking as given by the master booker and in which the distributor agreed to comply with those bookings, and the booker himself agreed to book such programs into his theatre as were best suitable to the exigencies of the exhibitor's particular situation, and in that manner give everyone an even opportunity to play all the dates, and the booker who did this was called a master booker.

There are 17 or 18 exhibits referring to—I think it begins at page 26, the Opera House at Grace, Idaho. This is not the complete file. That statement is not complete. The facts are: Mr. C. A. Orr operated the Opera House at Grace, Idaho. A claim was brought against him by Fox, and they obtained an award, as I recall it, for specific performance and $9.36 in cash—I do not remember what it was to cover; it was either for postage on a refused shipment or advertising matter or something; Mr. Orr was quite a lot behind in his contracts with several of the distributors, and the master booker arrangement had been entered into.

[fol. 658] This went along for some time and then Fox discovered that he had complied with their award entirely except for the sum of $9.36, and there are about 18 exhibits in

here having to do with the final collection of that $9.36, which, by the way, was finally collected and the thing ended. That exhibitor is still in business. It is a very small theatre.

Cross-examination.

By Mr. Thompson:

There is an Exhibitor Association in that territory I mentioned. In Utah they have what is known as the Motion Picture Theatre Owners of Utah; that association is about two years old; they have just changed the name and have given it the title of the Inter-mountain Theatres Association, I am informed, and they hope to take in affiliated associations from all the states in this territory, and I believe they have contracts in all these States. At the present time it is in course of organization as far as the territory outside Utah is concerned. The Inter-mountain Theatre Association appoints the members of my Board. They appoint Utah Exhibitors. I believe Montana has an association of their own which appoints exhibitors that sit on the Arbitration Board in Butte.

I do not recall an instance where we had an award not complied with in overlapping territory. I was just trying to think if we ever had one. I do not send my notices to the other secretaries of the other Film Boards.

[fol. 659] The exhibitors frequently come in from distant points in my territory to defend themselves before the Arbitration Board. Awards have been made allowing their expenses for coming in. I recall one. That is the only one I remember. That was last year.

[fol. 660] Clare Foley, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at San Francisco. I have the file of some papers here; these were taken from my office by the Department of Justice agents. It is not complete in respect to any of the matters referred to there.

There are about 500 theatres in my territory. The Exhibitors Association appoints the exhibitor representatives on the Arbitration Board. The Board meets in the Exhibitors Association offices in the Golden Gate Theatre Building. There is a representative of the Exhibitors Association present at the meetings of the Arbitration Board, but not through the entire proceedings; he comes in and out.

We have had suits only on awards where an exhibitor has sold his theatre and failed to provide for the assumption of contracts by the new owner, or has closed his theatre and gone out of business. We have had four or five in the year I have been there, I believe. These were where an exchange has filed suit for collection of an award made against an exhibitor who sold his theatre. These were actions by a distributor to collect an award. But there had not been any lawsuits to set aside any awards of the Arbitration Board.

[fol. 661] Cross-examination.

By Mr. Thompson:

The affiliated theatres are members of the Exhibitors Association. I would say most of the principal theatres in that territory are controlled and operated by the West Coast Theatres. The West Coast Theatres is one of the affiliated companies out there subsidiary to the Fox Film Corporation. There are other affiliated theatres in that territory. Universal has a theatre in San Francisco. That is the only one I recall right now.

In answer to question by the Court:

These exhibitors associations are open to all on equal terms, whether affiliated or not affiliated.

In answer to question by Mr. Grosvenor:

These exhibitor representatives that are appointed on the Board of Arbitration are appointed from the unaffiliated exhibitors.

[fol. 662] Adah L. Welch, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I was secretary of the Kansas City Film Board of Trade. I was secretary approximately two and a half years. I resigned the first of February and changed my name to Mrs. Welch. The letters signed by or addressed to Miss Menagh refer to me.

Q. During any period that you were there, was it the practice of the distributors at any time, or members of the Film Board of Trade, to ask security on new contracts with an exhibitor who had not complied with an award?

A. It was.

Q. Is that practice abandoned or was it still in operation when you left there a month or two ago?

A. We abandoned it about a year ago.

Q. Under instructions from where?

A. The New York office.

I know of no case of a refusal of service when a man offered to put up a deposit. No such case ever happened.

This file contains a case from page 35 to the end; The claim or case here is that of the First National Pictures against John Willy of Mulberry, Kansas. The copy of the complaint is on page 36 where he bicycled one picture, but according to the correspondence between the First Na- [fol. 663] tional and exhibitor, there were several pictures that he had bicycled, and on page 38 there is a letter from him where he admits that these pictures played in Arcadia and they were contracted for in Mulberry. He did not appear at the hearing. That letter was considered at the hearing; and then a copy of the award is on page 45, where [fol. 664] they grant First National Pictures an award for $1000. I was present at the hearings. Prior to giving First National Pictures that $1000 award, they also heard a Universal claim and gave Universal an award of $250, this was the second bicycle claim against this exhibitor on the same date.

In December we received a wire from Mr. Hess, General Attorney for the Film Boards of Trade, recommending that we get together with Mr. Biechele and Mr. Willy's

attorney and accept settlement, whatever they offered. Mr. Biechele is president of the Theatre Owners of Missouri and Kansas. He came to intercede for this exhibitor. The matter was adjusted. The exhibitor gave First National $15, which he considered equivalent to film rental and Universal $15. That ended the matter.

In answer to questions by the Court:

The $250 was a copyright infringement matter. It was another bicycling claim. That is the Universal matter I referred to. It is not in here, that claim; there were several claims against this exhibitor for bicycling. The claim was for damages for violating a copyright.

In answer to questions by Mr. Grosvenor:

This Mr. Beichle is a prominent exhibitor in Kansas City, Kansas, in that territory. He is president of the exhibitors association for Missouri and Kansas, our territory. Our territory covers the State of Kansas; and the western half of Missouri.

[fol. 665] The Association of The Theatre Owners of Missouri and Kansas appoints the exhibitor arbitrators. Mr. Beichle is instrumental in doing that. They cooperated while I was there during the two years in the arbitration work.

Cross-examination.

By Mr. Thompson:

The manner in which I received the instructions to change my rule about requiring security on new contracts was through Miss Marion McCullough. She was out there in person.

[fol. 666] GEORGIA D. MOFFETT, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary in Cleveland, Ohio. The territory the Cleveland Board of Trade covers is the northern half of

Ohio. There are 728 theatres in that territory. There is a state and a city exhibitors organization, The City of Cleveland Association and also state. I think about sixty per cent of the theatres in the territory belong to the State organization. Practically all of the Cleveland theatres belong to the Cleveland Association with very few exceptions. The exhibitor organizations appoint the exhibitor representatives on the Arbitration Board. I believe that they collaborate in the appointments. We have had cases in which a seventh arbitrator was necessary. I have been secretary since September, 1925. We have had a seventh arbitrator in about eight cases in these several years. The Board of Arbitration appoints the seventh arbitrator. Some of the gentlemen that have been appointed are Judge Grossman; Judge Green; Judge Corlett; Judge,—I really do not remember any of the others. These are all Ohio judges.

The exhibitors have supported arbitration during this period. During 1928 there were no cases in which a deposit was put up by an exhibitor who had not complied [fol. 667] with an award. I looked over these exhibits. The first case is not complete.

[fol. 668] MARION M. MCCOLLOUGH, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at Kansas City at present. Before that I was secretary at Indianapolis, for the most of two years. There is an Exhibitors Association there. It is a very active association. They appoint the exhibitor representatives on the Board of Arbitration. The meetings of the Board are held in the office of the Indianapolis Film Board of Trade. We always have five exhibitors' representatives and five distributors' representatives present at all meetings in addition to those on each side, in case of a challenge, in addition to the three arbitrators. There are challenges at times, so that with five present we are always

able to go ahead. Some official of the exhibitor organization always represents members of that organization at all arbitration meetings.

The Board meets every two weeks. I heard Mrs. Welch testify about Kansas City and what she said about me. When she mentioned my name I was making a visit to several of the Film Boards of Trade: and at that time I informed them that it was against the rules to consider it a violation to refuse to sell an exhibitor when he was on the Arbitration Information List; if that is the one you are referring to.

[fol. 669] I have looked at this Indianapolis file, Exhibit No. 21. There is a bicycling case here in the file. The papers are not complete about that matter. It begins on page 8. There was a family of several brothers who operated small theatres in Indianapolis; and they bicycled service all the time, especially short subjects; and the exhibitors had complained to us a number of times about the fact that this family was bicycling service, but none of them would testify before the Board of Arbitration; and the only way we were able to get the evidence was to employ someone to investigate; and we found that they had bicycled this picture which was booked for the Tuxedo Theatre for Sunday and Monday, I believe, and exhibited on Saturday. It was delivered on Saturday to him, and exhibited at the Savoy Theatre.

The exhibitor was represented before the Board by counsel; and also had a number of witnesses to testify. A claim was brought in the amount of $300, $250 damages, and $25 covering the cost of investigation, and $25 rental, and the award was in the amount of $100, paid in ten weekly installments. That was paid in ten weekly installments. The only damage in that case is a penalty under the Copyright Statute. $250 as damages is for the unauthorized exhibition. Then they asked for the rental.

In answer to question by the Court:

That is for exhibiting it when they did not have a li-
[fol. 670] cense.

In answer to question by Mr. Grosvenor:

He was a habitual offender.

[fol. 671] CHARLES R. ZEARS, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary of Film Board of Trade of Oklahoma City. I am just entering my fifth year as Secretary this month. The Department of Justice agents examined my files. They took quite a few papers. None has been introduced, from Oklahoma City. There is an Exhibitors Association in my territory. The exhibitors association appoints the exhibitor representatives on the Board of Arbitration. They have done that during the period of time I have been secretary. The Board meets in my office. The exhibitors association have a representative present, at all meetings. There have been no actions to set aside awards in Oklahoma; the territory covered is the entire State of Oklahoma, the Panhandle of Texas, and part of Arkansas; the towns bordering the Oklahoma line in Arkansas.

[fol. 672] HARRY MEYER, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary at Butte, Montana. I have been secretary there five years. There is an exhibitors association there. I was appointed secretary of the Film Board of Trade at the request of the exhibitors. The Exhibitors Association has worked in cooperation with the Film Board of Trade on arbitration for five years. There have been no lawsuits brought during that period to set aside awards.

Q. Was there a period in 1926 when the members of your Board followed the practice or agreement to ask for deposits on new contracts with exhibitors who had not complied with an award?

A. Non-soliciting agreement.

That agreement has been abandoned. It was abandoned July, 1926. A communication was sent to Mr. Hess to which he replied on July 23, 1926, saying that it was illegal and against the law and should be immediately rescinded; and it was done. Since that time the members have observed the Rules of Arbitration.

[fol. 673] ALMA A. WALTON, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosvenor:

I am secretary of the Memphis-Little Rock Film Board of Trade. I have been secretary almost five years. The exhibitors appoint the exhibitor representatives on the Board of Arbitration. There is an Exhibitors Association there, the Motion Picture Theatre Owners of Arkansas, Mississippi and Tennessee, and that is the territory covered by my Film Board of Trade. They have cooperated with the members of the Film Board of Trade in arbitration during these five years. They give us splendid cooperation. The representative of the Association attends the meetings of the Board of Arbitration.

There was a period when the members asked for deposits on new contracts with an exhibitor who had not complied with an award. That practice was abandoned last year, on instructions received from the New York office. Otherwise the members of the Film Board have observed the rules during these five years and are now observing the rules.

I have looked at this file, Exhibit No. 25 relating to the Memphis-Little Rock Film Board of Trade. The Government did not take a great many papers from my office. There are two bicycling cases in this file. The first bicycling case was Mulberry, Arkansas. I was not on the Board [fol. 674] at the time the claim was filed, but I know most of the facts.

The exhibitor acknowledged that he had bicycled the pictures; and an award was rendered in favor of the Exchange for $500. It was never collected.

This exhibitor closed his theatre. He did not comply with the award; and closed his theatre. Some months after that the Exchange that had procured the award, the branch manager went up to see this exhibitor, and after talking the thing over with him he decided he could not pay this award; so he asked for permission to set aside the award so the exhibitor could go back into the business. He did not pay any damages at all; but arrangements were made whereby he could just pick up his contracts and go ahead with his business.

[fol. 675] Colloquy Between Court and Counsel

Mr. Grosvenor: Your Honor, there is one exhibit of 500 pages from the general office which Mr. Hess is going over; and I believe Mr. Hess has an arrangement that when he has examined that file we can put in additional letters to complete the story.

Is that the arrangement you have with Mr. Hess, Mr. Thompson?

Mr. Thompson: Of course, we would have to see the letters. We would not agree to put in anything without seeing it.

Mr. Hess: As far as I have gone with these files there are letters that would complete the correspondence concerning the subject matter of the exhibit introduced by the government. I am having those letters copied from copies of the original letters in my office and submitting them to Mr. Thompson.

My understanding with Mr. Thompson this morning was that we would add those letters to the exhibit. So far as I have gone I have gone through with practically all with the exception of sixty or eighty pages more. There is no explanation I want to offer. The letters speak for themselves, with the exception of one or two letters which I think Mr. Thompson and I can stipulate as to what the explanation would be, a couple of sentences.

The Court: Aside from that the defendants rest?

[fol. 676] Mr. Grosvenor: Yes, your Honor, we rest now, and move to dismiss. Oh, well, you are going to finish your case, Mr. Thompson. Of course, that motion is before the

Court, and I suppose we will have argument on that later.

The Court: I understand the government has some rebuttal.

Mr. Thompson: Yes, your Honor.

The Court: Is there any prejudice to you with going ahead with this reservation?

Mr. Thompson: No, your Honor.

The Court: I think the understanding is then that the defendants rest, except for any additional evidence, documentary or otherwise, relating to the exhibits. What is it?

Mr. Hess: They characterize it as a general file. It is five volumes. No. 36, No. 36-A, No. 36-B, 36-C and 36-D.

The Court: 36, 36-A, 36-B, 36-C, and 36-D.

With that exception defendants rest.

Defendants' proofs closed.

[fol. 677] Mr. Hess: Counsel for the Government agreed that GABRIEL L. HESS, a witness for the defendants, who heretofore testified in this case, if recalled to testify concerning Plaintiff's Exhibits 36, 36-A, 36-B, and 36-C, would testify as follows:

With reference to Exhibits 78 and 79, Volume 1, Miscellaneous Home Office Correspondence, Film Boards of Trade:

As early as 1917, and at long intervals thereafter, there was considerable discussion among distributors in respect to the activities of so-called "booking agencies" which were organized by individuals to combine the buying power of a number of theatres. It was claimed that these booking agencies were organized in violatioin of law in that they created a buying combination to cut down rental prices of pictures and eliminate competition among the exhibitors in the combination. The subject of these booking agencies or buying combinations was discussed with the Department of Justice during the summer of 1927 and after such discussion the distributors definitely assured the Department of Justice that their proposed action in such regard would not be taken. The distributors had proposed to refuse to enter into contracts with the representatives of these booking

agencies or buying combines, but such refusal was not to contemplate refusing to do business directly with the indi-
[fol. 678] vidual exhibitors a part of such combination.

With reference to Exhibits 64 and 65, Volume I, Miscellaneous Home Office Correspondence, Film Boards of Trade:

Being a letter to the Secretary of each Film Board of Trade concerning allocation of contracts when among such contracts there is a Universal Complete Service Contract, this letter was sent to all Film Boards of Trade at the request of the Universal Pictures Corporation, giving as the reason for such request that as under the terms of the Universal Complete Service Contract the exhibitor was required to pay a definite specified weekly sum for a complete program of pictures selected by the exhibitor, Universal was not in a position to participate with other distributors in the allocation of either pictures or the proration of film rentals specified in contracts when requested to do so by an exhibitor.

With reference to page 101 of Volume 2:

In the early part of 1928, Paramount rented "Speedy" to this exhibitor for two days on a straight percentage agreement, and a checker was sent to the town the day before the play date. The exhibitor met him en route and offered to take him into the town of exhibition, but instead took him elsewhere.

The picture referred to above) was exhibited on the day
[fol. 679] before the contract date. During this time, the checker was with the exhibitor many miles away. However, evidence of the unauthorized exhibition was supported by affidavits and advertisements, and an arbitration award of $1000 was rendered for this wrongful use.

The files of this case are at present in the hands of Cansler & Cansler, Attorneys of Charlotte, N. C., with instructions to proceed in the United States District Court on a claim for infringement of copyright under the Copyright Law.

In March 1927, an award of $250 was rendered against this same exhibitor for bicycling a Paramount picture to a different town.

With reference to pages 112, 114, 116, 117, 119, 120 and 121 of Volume 2:

In this case investigation disclosed that pictures of First National, Pathe and Paramount were contracted for and played at one theatre and then exhibited at an Elks' Hall the same night, although the exhibitor held no contract for the latter.

The complaints were scheduled to be heard by the Washington Board of Arbitration on March 2, 1928. The exhibitor requested a continuance and the case was adjourned to March 16th. On March 5th this exhibitor wrote to the Secretary that he couldn't come to Washington before the lat-
[fol. 680] ter part of March or the first part of April. The representative of the Copyright Protection Bureau therefore left Washington. The exhibitor subsequent to the departure of the representative of the Bureau appeared at the hearing on March 16th despite his letter to the contrary.

At the hearing the First National Branch Manager withdrew his claim asserting that his salesman in 1925 had given the exhibitor verbal permission to use film at the Elk's Hall to find out whether it would pay the exhibitor to contract pictures to this house and that this permission therefore controlled at the date of the hearing in 1928. Pathe's claim was also withdrawn.

The exhibitor thereafter ceased the practices complained of and the Paramount claim was withdrawn and the case abandoned.

With reference to pages 105 and 106 of Volume 2:

This exhibitor played the same pictures at both his white and colored houses. It was disclosed that a majority of the distributors had given him the privilege on his 1927-28 contracts to play the pictures in both houses.

The exhibitor since has taken contracts for both houses and all claims against him were abandoned.

With reference to page 122 of volume 2:

[fol. 681] On November 6, 1928, the Copyright Protection Bureau was advised by the Paramount Home Office that their Minneapolis Branch Manager complained that this exhibitor contracted for pictures to be shown in Drayton, N. D., but were also shown in Bowesmount, for which town this exhibitor held no license.

On November 27, 1928 the manager requested permission from his Home Office to handle the case himself by procuring a contract for both towns. Mr. Clarke, division

sales manager, was asked not to accept a contract for future exhibition in settlement of these claims, because such a settlement would encourage switching and would not deter the exhibitor from repeating his offenses and that the branch manager be advised not to communicate with the exhibitor nor to take a contract for Bowesmount until he, Mr. Clarke, advised him.

On January 4, 1929, the exhibitor was advised to call upon the secretary of the Minneapolis Film Board of Trade who was furnished with the evidence of the exhibitor's practices. The exhibitor ignored the communication and switching claims were mailed to the secretary to submit to the Minneapolis Board of Arbitration, which claims have not as yet been passed upon.

With reference to pages 100, 102, and 103 of Volume 2:

[fol. 682] Prior to June 1, 1928 some thirty-seven Fox pictures were shown by this exhibitor without license. The Fox Branch Manager immediately billed this exhibitor for $131, which was their rental value if they had been contracted for. The exhibitor failed to pay this sum, and thereafter a claim against him was presented to the Board of Arbitration. An award of $1900 was rendered to Fox. The award has not been complied with, and the case has been abandoned because the exhibitor has left the motion picture business.

With reference to pages 55 to 65, inclusive, of Volfume 2:

Prior to September 1927 this exhibitor owned the Burnsville Theatre, Burnsville, W. Va.

On September 1927 he bought the Davis Theatre, Adrian, W. Va.

On January 26, 1928 this account was transferred to the Pittsburgh Board for the Credit Committee's consideration. The Committee had before it evidence that this exhibitor had been switching film into Adrian, W. Va., from September 1927, when he acquired the house, until January 1928. The exhibitors at Adrian for which he held no contract were substantiated by affidavits of personal witnesses thereof and an award of $1250 for these offenses was rendered [fol. 683] against him. This award was unsatisfied.

Thereafter and on January 23, 1928 an exhibitor, one L. E. Schull of Century, W. Va., wrote to the Pathe Exchange in Pittsburgh claiming that a competing exhibitor, one

Gibson, had shown a picture, "Don Desperado" in Century which had injured the complaining exhibitor's business by violating his protection. Investigation disclosed this to be the same Mr. Gibson referred to above. The complaining exhibitor was then asked to report the pictures which Gibson had shown at Century, but advised that it would be impossible to report the titles of any pictures shown by Gibson since both the captions and the names of the Distributors thereof were cutoff from the films and the films flashed on the screen without them.

On October 1st, 1928 it was reported that Mr. Gibson had left the territory and the case was abandoned.

With reference to pages 127 to 137, inclusive, of Volume 2:

On August 1st, 1928 the Secretary of the Cincinnati Film Board of Trade advised Copyright Protection Bureau that a United Artists picture had been exhibited without contract in two theatres operated by Pela Amusement Co. Pathe reported that it was necessary for them to remove their print of "Stand and Deliver" from another theatre of this same company, exhibition of which would have [fol. 684] caused a missout by a subsequent run.

A competing exhibitor operating The Idle Hour Theatre, Carthage, Ohio, also complained. Investigation disclosed in addition that the pictures of Metro, First National and Warner Brothers had been switched. However, it was found that a Warner Brothers' salesman without the knowledge of his Home Office had given the exhibitor permission to switch some of the Warner Brothers' pictures, and their claim was withdrawn.

The exhibitor denied the practices charged, but after the evidence was presented to the Cincinnati Board of Arbitration an award of $13,000 was rendered as follows:

United Artists	$1,000
First National	1,500
Pathe	3,500
Metro	7,000

Two days after the award was rendered the exhibitor arrived in New York and on advice of his counsel, Nathan Burkan, Esq., was offered the amount of $10,000, as settlement for the above award, which was accepted.

The defendants offer in evidence a letter dated December 8th, 1927, addressed to all Secretaries of all Film Boards of Trade, enclosing a supply of booklets entitled "Recommendations to Arbitrators appointed under the Rules and Regulations Relating to Arbitration in the Motion Picture Industry Based upon the Suggestions of the American Arbitration Association for the Guidance of [fol. 685] Arbitrators."

(Marked Defendants' Exhibit O-1.)

Mr. Hess: Defendants offer in evidence the booklet referred to in the preceding exhibit.

(Marked Defendants' Exhibit P-1.)

Mr. Hess: Defendants offer in evidence a letter dated November 3, 1927, from M. M. Dietz, Secretary of the Minneapolis Film Board of Trade to Mr. Hess.

(Marked Defendants' Exhibit Q-1.)

Mr. Hess: Defendants offer in evidence a letter dated November 7, 1927, from Gabriel L. Hess to Mrs. M. M. Dietz, Secretary of the Minneapolis Film Board of Trade.

(Marked Defendants' Exhibit R-1.)

Mr. Hess: Defendants offer in evidence a letter dated November 15th, 1927, from Mabel Dietz to Ben Koenig, Secretary of the Milwaukee Film Board of Trade.

(Marked Defendants' Exhibit S-1.)

[fol. 686] REBUTTAL PROOFS

ABRAM F. MYERS, called as a witness on behalf of the plaintiff, in rebuttal, having been duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

The positions I have held since 1926 are: In the summer of 1926, I was the special assistant to the Attorney Gen-

eral, the senior attorney of the Anti-Trust Division of the Department of Justice; and one of the assistants of the Attorney General in charge of that work.

In August, 1926, I became a member of the Federal Trade Commission. In December, 1928, I became chairman of the Commission; and in January, 1929, I resigned. I am now the president and general counsel of the Allied States Association of Motion Picture Exhibitors; and am practicing law in the District of Columbia.

While I was a member of the Federal Trade Commission I was designated by the Commission to preside at the Trade Practice Conference of the motion picture industry in New York and I did. I was present at all the proceedings. I am familiar with the signature of the Secretary of the Federal Trade Commission. That is his signature, and also the seal of the Commission.

Mr. Thompson: The government offers in evidence, your Honor, the transcript of the proceedings of the Trade [fol. 687] Practice Conference in the motion picture industry held under the auspices of the Federal Trade Commission at New York, N. Y., October 10th to 15th, 1927, which is certified by the Secretary of the Federal Trade Commission.

Mr. Grosvenor: What is the purpose of this?

Mr. Thompson: For the purpose of explaining more fully just what transpired there; and interpreting to some extent what transpired.

(Marked Plaintiff's Exhibit No. 39.)

The Witness: The resolutions adopted at that conference were submitted to the Federal Trade Commission for action. Defendants' Exhibit Y, which is a resolution, Rule No. 1, Group 1, I remember the discussion of that resolution. That resolution was acted on by the Federal Trade Commission, and it was approved by the Federal Trade Commission. That approval did not relate to any specific contract or any specific scheme of arbitration. That was made clear during the course of the discussion in the conference.

In answer to question by the Court:

The discussion is all in the transcript of the record.

The Court: Of course, you may take the record and refer to it.

A. The original resolution is not a distributor resolution.

[fol. 688] By Mr. Grosvenor: I am referring to page 313. That was Exhibitors' Resolution No. 6. The occasion for the introduction of that resolution is stated in the preamble:

"Whereas, the Standard Exhibition Contract contains clauses and added clauses, which, in actual operation have proved to be unfair and prejudicial to the interests of exhibitors, and:

"Whereas, experience, has demonstrated that in numerous instances said contract has been employed unfairly and unjustly to further the interests of the producers and distributors and to the prejudice of exhibitors, and:

"Whereas, it is absolutely impossible for exhibitors to obtain product for exhibition without signing said contract and acceding to said clauses:

"Now, therefore, be it Resolved: That it is the sense of this conference that the continued use and enforcement of said Standard Exhibition Contract constitutes an unfair trade practice, and it is further:

"Resolved that a body of seven be immediately selected, consisting of three members chosen by the exhibitor delegates here assembled, three members by the producer-distributor delegates and one to be designated by the Federal Trade Commission to act as chairman, with full power to investigate and adopt a contract which shall be fair and equitable to both sides and insure justice to all parties."

The discussion immediately thereafter shows that,—I find a title that I had never heretofore encountered, "Colonel Pettijohn"—introduced a substitute resolution which was the resolution finally adopted.

By the Court:

Q. That is the one that appears in Exhibit Y?

A. Yes. There was considerable discussion concerning [fol. 689] the substitute.

In answer to questions by Mr. Grosvenor:

I will be very glad to read what Mr. Pettijohn stated on page 314. It is all set out in the record, immediately following what I read:

"Colonel Pettijohn: This resolution which has been submitted goes to the subject matter of two of the major propositions before this Conference and probably if we can dispose of those two major matters before you have a Conference Committee on probably two other major matters it may be some incentive to the gentlemen on both sides to get together on those matters."

By the Court:

Q. You have no interest in this suit?
A. I have no interest in that part whatever.

"I submit, in lieu of the resolution read by Mr. Woodhull, with his knowledge and consent, a substitute resolution which has been discussed, worded and worked out by Mr. Grainger and myself, representing the left wing, with Mr. Seider, Mr. Hess and Mr. Charles O'Reilly, representing the center wing, if wings are in the center. This substitute has been read—we have only two copies—we have not had a chance to get it to all of you, but it has been read to such leaders in both sections of the room as we have been able to accidentally meet and hurriedly read to them. We believe that this resolution can be passed by both sides. I desire to read it to you as a substitute and to state again, before reading, that it has been discussed with leaders on both sides and yet I have heard no objection [fol. 690] to it, and I will now read it."

That is the substitute resolution No. 6.

In answer to question by the Court:

That is the one Exhibit Y. That is the one now in evidence. The discussion continues for a number of pages.

In answer to questions by Mr. Thompson:

There was a question as to the meaning of this resolution. It will be found in the questions asked by Mr. Samuelson on page 325, an interpretation of the resolution which immediately follows which I gave for the benefit of

the assemblage on page 327, and continuing discussion on that point down to the vote, which was taken on page 335.

Mr. Grosvenor: The Commissioner presiding stated after the presentation of the resolution page 319.

The Witness: I did not omit it. I suspended before that. I did not say I had omitted it.

In answer to questions by Mr. Grosvenor:

"The Commissioner presiding states: 'I have no hesitation in saying at all that the policy of the United States and the law is in favor of arbitration. It has been exemplified in recent statutes, particularly the Admiralty Statutes.' I was merely thinking and thinking aloud whether that was a proper thing for the Commission to undertake, but I think that is something that can be [fol. 691] resolved later anyway. Is there any objection to the substitute, Mr. Woodhull?' "

Mr. Pettijohn had substituted the resolution in place of Mr. Woodhull's resolution which I read first, and asked Mr. Woodhull before the substitute was accepted whether Mr. Woodhull had any objection to the substitute. Mr. Woodhull replied, next page (320): "We accept the substitution."

In answer to questions by Mr. Thompson:

Reading the statement with reference to the interpretation of the resolution (p. 325): "Mr. Samuelson: I desire to ask your opinion as to just exactly what, as to how you interpret the last clause of this resolution, which reads as follows: 'Be it further resolved that the uses'——"

The Court: Let me ask counsel, I can read this in less than half the time it takes to read it here, at my own desk, unless it is the basis of some further questions, otherwise there is no particular purpose in reading it.

The Witness: Those resolutions were later acted upon by the Federal Trade Commission, and this substituted resolution was approved by the Commission.

[fol. 692] There was no record made of the interpretation at the time the Commission approved this resolution beyond that contained in the transcript.

The procedure in connection with Federal Trade Com-

mission conferences is, a report of the Presiding Commissioner is made and a transcript of the hearing is circulated to all the Commissioners, and that was followed in this case.

In answer to questions by the Court:

There was a report made by me as the Presiding Official. That report is contained in this pamphlet.

The Court: The report that the Commission had before it, on which it acted, is here.

In answer to questions by Mr. Thompson:

The Allied States was organized in December 1928.

Cross-examination.

By Mr. Grosvenor:

The Witness: I presided throughout the conference at this Federal Trade Commission Trade Practice Conference. I had given some consideration to the matter of having this conference. The plan for the conference was all worked out with considerable care by Mr. Flannery. He was a director of trade practice conferences and was one of the Federal Trade Commission charged with the duty by the [fol. 693] Federal Trade Commission, of working out these practices, that is his regular business.

He did not confer with me until after his plan had been submitted to the Commission and approved, and I had been designated. It was completed before I gave any individual attention to it. I approved it then. I had approved it as a member of the Federal Trade Commission, before he submitted it to me individually. It seemed to me a fair plan, otherwise I would not have approved of it, and I thought it was a fair plan while I was presiding.

I did not make any suggestions at the conference that everybody was not fairly represented. There was some such suggestion from the floor, but not from me. The objection on the floor is shown in the transcript. I can point it out in the record.

(Recess.)

A. I saw this a few days ago. I cannot find it now, it is the indexed volume.

It was not an objection sufficiently important in my mind to work any change in the methods or in the plan which had been laid down.

Mr. Flannery gave a lot of attention to this matter and [fol. 694] prepared a record for the Director of Trade Practice Conferences of the Trade Practice Conference of the Motion Picture Industry. That is an elaborate report that was printed as part of the pamphlet of the matter published by the Federal Trade Commission, and that report is contained in the pamphlet, from pages 15 to 51. The Commission had that report before it before it approved this resolution. I examined that report, approved the report. After I had examined the report, I made a report to the Commission which is also printed in this pamphlet, and that report appears in the pamphlet on pages 13 and 14. The Federal Trade Commission, when it finally approved this resolution, in considering the matter, had before it both my report and Mr. Flannery's report. Now, Mr. Flannery, at page 37 of the pamphlet referred to Exhibitors' Resolution No. 6, which is the resolution we have been considering; and he is now referring to the substitute which had been passed, and which was before the Commission. That is, he is now referring to the resolution as introduced by Col. Pettijohn.

He states in his report:

"Exhibitors' Resolution No. 6, from the standpoint of the independent exhibitor, is probably one of the most important resolutions passed by the Conference;"

I noticed that in his report, and I agree with it absolutely. [fol. 695] It afforded relief from the complaints they had been making and an opportunity to negotiate a new contract. That was the purpose, to give the industry an opportunity to work out with the distributors a new contract; to cure the complaints against the 1926 contract; everybody thought that would be a fine plan.

A committee was appointed at this conference of distributors and independent exhibitors to carry out this plan. That was done by action of the organization, the Exhibitors Organization.

It was necessary to appoint representatives.

It was part of the plan that a Contract Committee should be appointed, and then go over the contract, clause by clause and reform it.

I know that the unaffiliated exhibitors elected their delegates at a caucus. This committee, which was to represent unaffiliated exhibitors, was elected by the delegates of the unaffiliated exhibitors. There is doubt about that. I did not question the method of appointment. I am President and general counsel of the Allied State Association. I am on an annual retainer, primarily as counsel, but I hold both positions. I have been general counsel since January 15, 1929, and have been president the same length of time.

The Commission approved my report and Mr. Flannery's report and I considered this matter of considerable importance, because it is the first rule which was approved [fol. 696] by the Commission—this resolution relating to arbitration and contract. It is set down in the beginning of the pamphlet. I do not think that arrangement necessarily emphasizes its importance.

I, as a Federal Trade Commissioner, considered that I had accomplished something notable in that particular; the conference was a failure in other respects.

[fol. 697] William A. Steffes, called as a witness on behalf of the plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

I am a motion picture theatre owner at Minneapolis, Minnesota; I have been in that business twenty years. Right now, I operate one theatre; I have operated other theatres. I have been a member of the Northwest Theatre Owners Association as long as that association has been in existence, fifteen years. I have been president fourteen years. In 1920 and 1921 each company had a different contract at that time. There was no standard contract; everybody used one of their own.

It was matter of considerable difficulty for the exhibitors to negotiate in that way. There was agitation to get a Uniform Contract starting in 1921.

[fol. 698] My Association took action in trying to get a Uniform Contract. We sent people to New York to confer with some of the sales managers and heads of some of the producing companies, trying to sell them the idea to give us a contract with standard clauses. We had an arbitration in Minneapolis starting in 1921. We appointed two theatre owners, and I believe the Exchange Managers appointed two and we started to arbitration.

The exhibitors and distributors submitted matters to that committee for arbitration. The committee made decisions. There was no provision for enforcing their decisions, either by suspending service or demanding security or any other manner. Those decisions were unanimously complied with as far as I know. This so-called Hoy system was in effect in Minneapolis two or three weeks. That was either late 1921 or early 1922. I believe he started there.

The reason why it was only maintained two or three weeks was, we have an organization out there that is quite powerful and we just refuse to allow Mr. Hoy to go to work in that territory.

This other arbitration system I mentioned was used before and after this attempt to have the Hoy system. Our State Association has always been a member of some national organization. The present Association is the Allied States Association.

[fol. 699] There were two National Associations of which our State organization was a member of namely: Motion Picture Theatre Owners of America and Allied States Association. The Motion Picture Theatre Owners of America has been in existence since 1922.

I do not think all states had their own associations of Motion picture exhibitors. I was familiar with conditions throughout the country, as at various times I visited every exchange center, I believe, in the United States, but whether it was in 1922 or not, I do not recall.

The so-called organizations, there are perhaps 15 states in the United States that have exhibitor organizations, that hold regular meetings, have secretaries and have offices. Outside of that, they have a paper organization, with a few

officers' names on the letterheads and hold a meeting, perhaps once a year or every two years.

I had complete knowledge of general conditions around this period of 1922 and 1923, and as to the number of state organizations, and I think as to the character of them, obtained from coming in contact with the leaders, and from discussing the situation with people in the territory.

The 15 strong exhibitors' associations in 1922 and 1923 were New York, New Jersey, Pennsylvania, Michigan, Wisconsin, Northwest, California, Kansas, Oklahoma; I believe that is all I can recall. The president of the National Association in 1922 was Sidney S. Cohen.

[fol. 700] The Witness: I received perhaps a dozen letters from Mr. Cohen in 1922 with reference to negotiations for the Uniform Contract. Mr. Cohen requested me to attend the meetings in New York to take up that matter. I attended such meetings. There were probably a hundred. We spent about ten months of that year in New York City. Those meetings were taken up with the discussions and proposals for a uniform contract. They were meetings of the executive members of the exhibitors who later on perhaps met with representatives of the distributors.

The exhibitor members of that committee were as I recall their names and associations they represented: Claude E. Cady of Michigan, Sidney Cohen of New York, Col. Varner of North Carolina, Beichele of Kansas, Hayman from Niagara, C. C. Griffin of San Francisco, Clem Harper of Los Angeles, Joe Rohde of Wisconsin, J. Seider of New Jersey; I do not know whether he was in '22 or 1923. That is all I can remember. The original contract committee was the Board of Directors or the Executive Committee of the Motion Picture Theatre Owners of America. After we had worked two, three, four or five weeks, the boys kept going home and it was thought advisable at that time to appoint a subcommittee. I was on that subcommittee. As a member of that committee I had many negotiations with reference to [fol. 701] the contract. The way those negotiations were carried on were as follows:

I believe it was early in 1922, right after Will Hays was appointed or elected to head the producers; Mr. Cohen at that time was National President; he called in the Board of Directors for the purpose of conferring with Hays, to see

if we could not get Hays and his associates to agree to a uniform contract. We met at the garden of the Biltmore Hotel. That continued that day, then the next day we met with the directors representing these various distributors; that continued, I believe, for ten, twelve or fourteen days. At the end of that time, I believe the Motion Picture Theatre Owners of America presented to that group a draft of a contract that they thought would be fair. That was rejected.

At the next meeting we were presented with a draft of a contract, that was submitted by the representatives of the Hays organization. That also was rejected. They kept doing that during the greater part of the year, before there was a contract of any kind put into the business.

This paper is the original draft of the contract which was prepared by the exhibitors' committee. This document came from my files. I gave it to Mr. Thompson, last week or a week before. There were a great many drafts of individual paragraphs of contracts, but not a great many drafts of a completed contract.

(Marked Plaintiff's Ex. 40.)

[fol. 702] This other paper is one of the counterdrafts which I referred to. I do not know whether this is the first counterdraft they submitted, or the second one, but it is a counterdraft that was submitted to us.

(Plaintiff's Exhibit 41.)

Recess.

WILLIAM A. STEFFES, resumed:

Direct examination.

By Mr. Thompson (continued):

Minutes were kept of the meeting in 1923 of the Committee at which we considered these proposals regarding the contract. The only official minutes that were kept were kept by Mr. Hess, unless Mr. Cohen may have had some. When negotiations first started in 1922 there was talk of an Arbitration Board, of Arbitration Rules in the contract. The first I heard of it was from Mr. Hays himself. Whether

he originally suggested it or not. I do not know. There was no specific plan suggested at that time. That suggestion was in a personal discussion with Mr. Hays. I approved of the principle of arbitration. A specific plan was first proposed in the 1923 contract, just prior to the time that the contract was put into effect.

There were several proposals made. The first proposal that was made was that there be seven arbitrators, none of them who would be connected either directly or indirectly with the business, the theatre owners to chose three and [fol. 703] the producers three, and they to chose the seventh man. That was the first proposal.

Then I believe we came back with a counter-proposal with one, one and one. One theatre owner, one distributor and one disinterested party; and at the time that we suggested that I believe the representatives of the producers then came back *back* and said they were having a firm of attorneys draft an arbitration plan; and I think that is the one that finally got into the contract.

This arbitration plan was submitted to this Committee of which I was a member. They approved it. It got into the contract, in 1923. I believe there was adverse action taken by the National Organization. There was a subcommittee finally working on this contract. I think there were three theatre owners and their attorneys, and sales managers for the producers; and after the Committee had agreed that was the best we could get at that time; there was a national convention held immediately thereafter, and I believe by resolution they condemned the action of the Committee and the contract itself. The Committee accepted the contract in 1923.

There was a report made to my State Association but they refused to take any action. They said they would go along and continue the way they were continuing with the voluntary Arbitration Board, and would not recognize the new Arbitration Clause that was put in the contract.

The contract was put into use by the distributors late in 1922 or early 1923. 1923 I believe was the first contract the [fol. 704] arbitration clause was in. My association at that time did not start arbitrating in accordance with the plan. We continued the form of arbitration we were using prior to the negotiations of the contract until 1924 or 1925.

We then started to use the Plan provided in the Uniform Contract. I believe we were compelled to. The producers' representatives or managers in Minneapolis refused to arbitrate any more under the voluntary plan; stating that there was a set of rules in effect at that time, and they would have to abide by those rules. I believe there were several months elapsed before we arbitrated at all. I think that Mr. Pettijohn came out there at that time and got the boys together; and after his visit we agreed to arbitrate under the contract. The Allied States Association was first organized in 1924, and continued until June 3rd, 1926.

After the Uniform Contract was put into effect my association made efforts to secure changes in it. Immediately after the uniform contract was put into effect we began complaining that it was not uniform.

At the time of the first negotiations what we had in mind at that time was to get the contract shorter and more understandable and with standard clauses; clauses that all companies would use. After the contract was printed we found that it was practically as bad as it was before. Every company was reserving the right to use rubber stamped clauses, extra clauses and additions; and the Committee [fol. 705] immediately started in negotiating with the Hays organization again for a Uniform Contract. It was understood that this committee was to be a continuing committee at that time. Later on it was known as an advisory committee.

This continuing committee were told that at the time of the adoption of the first contract that if there was anything in it that did not work out equitably and fair that we should gather this data, and then we would meet again and negotiate either for the purpose of changing any clauses in the contract that might have worked detrimentally to the theatre owners. The members of that exhibitors' committee I believe were designated by Mr. Hays. He requested me to serve on the committee. I secured permission from my State Organization to serve on it after I had been requested to do so. I was not given any authority by the Association to bind it or its members.

The negotiations kept on going continuously. We would probably meet three or four times a year, writing letters, so forth and so on, trying to get the producers to meet with us.

Then there was a lapse of two or three years that the producers did not meet with us at all during that time. We resumed negotiations I think in 1925. It may have been late 1924 or early 1925. Whether it was in 1924 or not I do not know, but we discontinued arbitrating several times. The exhibitor Arbitrators felt that we could not get justice and equity with the present set-up. They had been confronted continually by the statement of the producer mem- [fol. 706] bers, that they had to arbitrate according to the contract, and whatever the contract said was law; so we felt that inasmuch as we had no authority to go beyond the contract it was not necessary to take up our time to interpret the written clauses of the contract.

In answer to questions by the Court:

What we wanted in Arbitration was that equity and justice should prevail. For instance, a manager would go out through the territory and make promises,—verbal promises to the theatre owners, telling them that if they would abide by the contract, he would see that everything would be taken care of and if such and such a theatre would say that he was overbought at the time, the manager would come along and say, "I can't split the group; I have to sell them all but at the end of the year, if you have any trouble, I will fix it up."

Statements of that kind would be made to theatre owners, and we could substantiate these statements. The distributor members said that they had no authority to go beyond the written terms of the contracts.

In answer to questions by Mr. Thompson:

I signed the paper which has been introduced in evidence, with reference to the 1926 contract.

(Defendants' exhibit S.)

I signed that as an individual. I do not know whether that was the case with the other persons whose signatures appear on there. I signed because I believed that that was [fol. 707] the best we could get at that time and thought that we had made a step in the right direction. We at least were assured then that the clauses in the contract would be uniform and all companies would use them.

We were again told that they would now appoint an advisory committee, and that the advisory committee was to function the same as the continuing committee did before and that if there was anything in the way of hardship in that contract—that would work a hardship on the theatre owners, they had authority to negotiate to have it changed. We were told that was as much as we could get, so we signed.

I believe the National Association passed a resolution at Los Angeles, June 2, 1926, condemning the entire contract, the 1926 Standard Exhibition Contract.

In the summer of 1926 we had some dispute with reference to arbitration in Minneapolis. It was the same thing. The producer members would come in and vote as a unit and insist on the contract being the only instrument that they would listen to; anything outside of the contract they would not consider as evidence and vote that way. I called a meeting at Battle Creek, Michigan, in October, 1926. I attended that meeting.

It was the meeting of the Allied States Association jointly with Michigan Theatre Owners. At that meeting a letter was prepared to send to Mr. Hays outlining the views of [fol. 708] the people attending it. That was the letter that was prepared and sent out. That is my signature. There were at the meeting representatives of the Allied States from various state organizations throughout the country. In addition to that, the Theatre Owners of Michigan, I do not know who they were; there were a couple of hundred of them. It was a meeting of the leaders of the Allied States Association. This is the answer to that letter. This is my reply to that letter from Mr. Hays.

(Plaintiff's Exhibits 42, 43 and 44.)

This letter is the letter as a result of which I became a member of the continuing committee.

(Plaintiff's Exhibit 45.)

This was an agreement that was made by Mr. Pettijohn representing the Hays organization, before a joint committee of the Executive Committee of the Northwest Theatre Owners and Minneapolis Film Board of Trade members. This agreement was entered into after these protests had been sent in. We were not arbitrating at the time Mr. Pet-

tijohn came in with that. After that we resumed arbitration.

(Plaintiff's Exhibit 46.)

The advisory committee of which I was a member during 1927 did have negotiations with the distributors with reference to the Standard Exhibition Contract.

(Plaintiff's Exhibit 47.)

This was a memorandum of what was finally done at the meeting. No additional clauses to the standard contract [fol. 709] than those stated in there were approved by the advisory committee. That is all I remember.

In these negotiations which I conducted or took part in I never was given any authority by any group of exhibitors to represent them.

It was our understanding that before anything could be done, the first contract, this uniform contract, would be ratified by the various organizations throughout the country; but I do not believe it was ever done. The contract was put in force before any organization I know of approved it. The last contract that was approved was approved in New York in 1928; there has been no organization, to my knowledge, that has approved the contract except by acting under it.

I was not present at the Federal Trade Conference. I was not a member of the Contract Committee which negotiated the 1928 contract. I was present in Chicago at the time the Contract Committee met. I tried to take part in negotiating the contract or in instructing or advising the exhibitors' representatives. I wired approximately 100 theatre owners in all parts of the United States.

This was probably January 15th that we started to send out wires, requesting these fellows to come in to Chicago for the purpose of conferring and advising with the exhibitor representatives, and I believe we had in Chicago 100 or 112 theatre owners from different parts of the country. We held a meeting one day; went over the 1926 con- [fol. 710] tract, pointing out the inequities and suggesting to the Committee how they should be changed. They worked all one day; they wanted a sub-committee appointed from the larger group to confer with the committee. I was on the sub-committee. The sub-committee did not meet

them; there was a meeting the next day, at which time the producer representatives were admitted or were in the group. I made a motion that we adjourn the large meeting, allowing the Committee to go into executive session for the purpose of working out a contract and then the Committee to meet with the larger group after their day's work was through and report what progress had been made. That resolution was objected to by the producers. They stated that they had come to Chicago with full authority to complete a contract and they understood that the exhibitor members had that same authority. If that was the case, they did not know why a small group should report back to the larger group. They stated that they did not have to report back to any one and they did not think that the exhibitors should, stating further that if they did that, that would prolong the conference too long. There were too many different factions in the larger groups. That is what happened. The exhibitor members of the committee, after the first session, were asked what progress was made. The committee told me they had to enter into an agreement with the producer members and while in Chicago [fol. 711] they would not confer with anybody and they refused to tell me or any one else what took place in the session, and the next day I did not see them any more. The committee that I expected to get into the advisory committee then disbanded. I remained in Chicago until the contract committee adjourned the first time, but the rest of the boys all went home.

My state association did not take any action to authorize the contract committee to negotiate a contract, but we had a delegation present at this Chicago meeting. The Association ratified the contract only through its use. As an association we did not ratify it.

Since the 1928 contract was put into use I have never signed contracts under any other form. Salesmen never offered to contract except on the standard contract. I was not present at the meeting at which the agreements were signed, with reference to the 1928 contract.

Cross-examination.

By Mr. Grosvenor:

My association out in the Northwest is a powerful exhibitors organization, and it has been for some years. I

have been president of it. We have a board of directors and an executive committee.

I was subpœnaed by the Government. I have been here throughout the trial sitting in the courtroom part of the time. I heard Mrs. Dietz, the secretary of the Minneapolis Board testify. I was not here when Mr. Kirchwey testified. I know Mr. Karl Kirchwey.

[fol. 712] I recall seeing him several times. I imagine we spent close to ten months during that year 1923 here working upon the first Uniform Contract. I recall approving the contract with Mr. Kirchwey and Mr. Crandall and a gentleman from Detroit. I approved it then.

In 1926 I was on the Advisory Committee and approved the agreement of the second Uniform Contract now called the Standard Contract. There are ten signatures. The different organizations with which those gentlemen were connected at the time they signed this document (Exhibit No. 1 attached to the answer) are Jules H. Michael from Buffalo. I do not know what was his organization. H. M. Richey was from the Motion Picture Theatre Owners of Michigan. Frank J. Rembusch, of Indianapolis. H. A. Cole, Dallas, Texas. Julian Brylawski, Washington, D. C. Joseph M. Seider, New Jersey. R. R. Biechele, Kansas. Charles L. O'Reilly, New York. R. F. Woodhull, New Jersey; and myself, Minnesota.

I have mentioned the states from which they came, the names of the organizations. One minute. On direct examination I mentioned several large exhibitor organizations, and the powerful ones at that time. Mr. H. M. Richey was business manager of Motion Picture Theatre Owners of Michigan. He held a position like mine in the Northwest. I am a salaried officer of my organization. I have one theatre. My organization also runs and exchange [fol. 713] and lease pictures.

This is a form of contract which that organization uses in leasing pictures to exhibitors in our territory. It is in use now and has been ever since we have been in business. This is headed "Motion Picture Theatre Owners of the Northwest." This is an Exchange or distributing agency for the Motion Picture Theatre Exhibitors in that territory, identified with my organization. This form is identical with the Standard Contract adopted in 1926, and we

have used it three or four years. I do not know if we are now using the 1928 form of contract.

Let us take up these names that signed that agreement on February 6th. Mr. Richey, I stated was the business manager of the Motion Picture Theatre Owners of Michigan. That was one of the large organizations. Mr. Rembusch: His organization is himself I guess mostly. He was at that time president of the Motion Picture Theatre Owners of Indiana. That was not one of the large exhibitor organizations. Mr. H. A. Cole, Dallas, Texas, President of the Motion Picture Theatre Owners of Texas.

X Q. The next gentleman, Mr. Julian Brylawski, what was his organization?

A. I do not think he had any.

X Q. Was he not chairman of the Administrative Committee of the Motion Picture Theatre Owners of America?

A. Yes, he was. I do not know whether he was at that time or not. He was at some time or other.

X Q. He might have been?

[fol. 714] A. He might have been so far as I know.

X Q. He did hold that position at one time?

A. At one time he did.

Mr. Joseph M. Seider, in February, 1926, I believe he was national president of the Motion Picture Theatre Owners of America. Mr. R. R. Biechele was President of the Kansas Organization, and that also included Missouri. That is a large organization. Mr. Charles L. O'Reilly was a member of the Theatre Owners Chamber of Commerce, New York City. I do not recall whether he was president at that time or not. He had been president, or he was president at some time or other. Whether it was at that time or not I do not know. The next name is W. A. Steffes. That is mine. Mr. R. F. Woodhull was the Theatre Owners of Dover, New Jersey. Mr. Woodhull was not, I think, the president of the Motion Picture Theatre Owners of America at that time. He is now.

X Q. In that meeting on February 6th, 1926, an Advisory Committee was appointed to further improve the contract, and you became a member of that Advisory Committee. You were appointed a member of that Advisory Committee, were you not?

A. Yes, I was a member of the Advisory Committee. Whether I was appointed at that time or not, I do not know.

X Q. Mr. Steffes, you were present when that agreement of February 6 was drawn to which all these names were signed?

A. At the Union League Club.

X Q. Yes.

A. Yes, I was present.

[fol. 715] X Q. Were you here when Mr. Hess testified?

A. Part of it.

X Q. Did you hear his statement that there was a group of exhibitors at the Union League Club, and a group of producers at 469 Fifth Avenue, and they telephoned back and forth on questions arising, paragraph by paragraph, do you recall that?

A. No, I do not recall any such thing happening in the conference.

X Q. I show you another document dated May 18, 1926, which appears as Exhibit 2 of the Answer, and ask you if that is your signature? (Handing it to witness)

A. It is.

Mr. Grosvenor: I will offer that in evidence.

(Marked Defendants' Exhibit M-1.)

Mr. Grosvenor: It is Exhibit 2 of the Answer. Do you object to it?

X Q. Were you the organizer of this Allied States of which Mr. Myers is now the president?

A. No, not the one of which he is now the president.

X Q. Did you ask Mr. Myers to become general counsel of the allied States?

A. Yes.

X Q. And did you not travel all over the country trying to get the State organizations to join this new organization which you had formed?

A. No, I travelled in some of the states, and got them all to join with the exception of one.

X Q. To leave the Motion Picture Theatre Owners of America and join this new organization?

[fol. 716] A. No. I said nothing about the Motion Pic-

ture Theatre Owners of America. I asked them to affiliate with the Allied States Association.

X Q. You asked them to do that whether they were then affiliated with the National organization, already affiliated with the National organization or not, did you not? Is that not correct?

A. Well, I do not believe that there is a National organization of Theatre Owners in existence outside of the Allied at this time.

Mr. Grosvenor: That is all.

By the Court:

Q. Is that organization completely representative today, in your judgment, of the exhibitors throughout the United States?

A. Well, we have not been in existence long enough to be generally representative; but it has in the organization the strongest state units in the country, with the exception of possibly two or three that have not affiliated as yet.

Q. Do you feel that through that organization the position of the exhibitors in any process of collective bargaining with the distributors has been materially strengthened?

A. We have not met with any one yet.

Q. What is your judgment about it?

A. I believe, yes, that after the Allied States Association gets organized a little more, a little stronger throughout the country in the different sections of the country, we will be in a better position to deal with the producers than we ever were before.

Q. The evidence in this case and your own testimony dis- [fol. 717] closes the fact that from prior to 1923 there has been a process of collective bargaining in reference to the provisions of the Uniform Contract, and particularly with reference to the Arbitration Clauses thereof, going on between the motion picture distributors and exhibitors in this country.

Do you consider that the results accomplished in that process as compared with the trade conditions as they existed prior to that time have had a good effect on the industry or bad effect?

A. Oh, I think we are better off today than we were in 1921, yes. I think the business has become stabilized generally. Whether it has been brought about through the contract or brought about by different men coming into the business——

Q. Probably from both reasons.

A. I imagine so, yes. They have an entirely different class of theatre owners today in the business than there were in 1921, 1922 and 1923.

Q. Is that so with respect to the distributors also?

A. Well, the same distributors today are left, are still in business. There are not quite as many of them as there were in 1921, 1922 and 1923.

The Court: That is all.

[fol. 718] HARRY A. COLE, called as a witness on behalf of the plaintiff in rebuttal, having been duly sworn, testified as follows:

Direct examination

By Mr. Thompson:

I am a motion picture theatre owner in several towns in Texas, Marshall, Texas; Bonham, Texas and Jefferson, Texas. I have been operating motion picture theatres nearly ten years. We have an Exhibitors Association in Texas. I am the President of it, and have been president between six and seven years. I did not have any part in negotiation for what is called the Uniform Contract. No member of my association or representative of my association took part in those negotiations. My association probably was in 1922 a member of the National Association. [fol. 719] It was a very inactive Association at that time, merely a paper organization, I might say; and I think that we had a representative to the National body. I first became connected with any negotiations for one of these Standard Contracts in 1926. I attended the meeting at the Union League Club. I received a wire from Mr. Steffes, asking me to come in to that meeting in an advisory capacity. I reached there only about two or three hours, about two hours before the adjournment of it. I had no real part in the negotiations; merely the general approval at the end of it. While I was present they were cleaning

matters up, different clauses, this clause and that clause and the other one. I think I made a protest or two or suggestion or two; but the contract was practically finished before I reached New York. I signed that agreement with reference to the contract. Yes, that is my signature.

Mr. Grosvenor: (Defendant's Exhibit S.)

The Court: When you show the witness a paper state what it is.

Q. Did you sign that as an individual or as a representative of your Association?

A. Strictly as an individual.

Q. What were your reasons for signing it?

A. Well, it was the best contract we could get.

The Court: That is always the reason for making a contract.

The Witness: We had no say-so as to the form of it; merely advisory.

Q. To whom do you refer by "we"?

A. The exhibitors present.

[fol. 720] By the Court:

Q. You did not get any contract when you signed that paper, did you?

A. Did not get any contract? We got, supposedly, a form of contract that was to be issued by the distributors.

Q. When you signed it did you regard yourself as a representative man in the business of exhibiting motion pictures?

A. Yes, sir.

Q. Or at least you gave your moral approval then of what the distributors proposed, did you not?

A. Well, Judge, if I may answer that informally.

Q. Certainly.

A. After a clause is brought out or even to be included in this contract and I say "no, that is absolutely objectionable to me," they say "well, you are going to have it. What are you going to do about it?" And they say, "Here is another clause, and you have suggested it, and you can have it."

That is an improvement, and I want that. I have got to take the good with the bad, because I have no veto on it. They have the last veto.

Q. But you could not write your own ticket?

A. No, but I did not even have a chance to write my ticket.

By Mr. Grosvenor:

Q. You got there too late. It was all over but two hours.

A. That may be true.

By the Court:

Q. We could accept the document as showing a little more than the significance you first gave it. Do you not [fol. 721] think it would be fair to do so?

A. I made it just as an improvement. I think the statement says that it is just merely the gist of what I intended in my statement, that it was an improvement of what we had. There were some changes in it that we wanted; but I would not take it, I think, as an endorsement of the contract as it was. I did not intend it as such anyway.

Q. Did your association ever take any action approving the contract?

A. No, it was laid before our Association and the changes explained as a practical working proposition. We did not either approve or disapprove as an Association.

Q. Was your Association then arbitrating under the plan provided in the new form of contract?

A. Well, I should say "no" to that. We were arbitrating.

Q. Will you amplify your answer, and explain why you answer that way?

A. Well, I guess we are a little peculiar in Texas. We took the stand on the first contract shortly after I was elected president.

[fol. 722] In answer to questions by Mr. Grosvenor:

I was elected president in 1923, I believe, if my recollection is right; and I believe the Film Board of Trade was organized in 1924 in Dallas.

I think Texas was a little bit late in organizing, and behind the rest of the states. They were a little bit doubtful about the Texas laws. After some investigation of them they started. There was considerable fear on the part of the exhibitors of my organization as to the working of this new contract and arbitration clause. There was rather a panicky movement to fight it.

At the time I told my association that, in my judgment, it might be a wise plan to try it out for a short while; and that was agreed to informally. I do not think there was any resolution on the subject.

I then went to the Film Board secretary and told him that he was on trial. That Texas laws were pretty stringent with reference to Anti-Trust matters; and if they were not I thought we could get the necessary legislation if an injustice was done under this Arbitrarian Clause.

At his request I appointed arbitrators.

We worked arbitration in Texas, I guess, you might state a little illegally, outrageous perhaps from some standpoints, but to be perfectly frank with you we tear up the contract and Rules of Arbitration if we feel that justice is done by so doing.

I believe there has been testimony offered before this [fol. 723] Court with reference to one case where we reduced the film rental from $2,100 to $1,500 on a certain contract. I believe that is almost unheard of throughout the country. I never heard of it in any instance but we do it. They say we can not do it, but we do it; so I do not believe that we are operating under the contract or under the Rules of Arbitration, because we tear them up once in a while.

In answer to questions by Mr. Thompson:

Before attending that Union League Club meeting in 1926, I prepared suggestions containing not only my ideas but the ideas I believe of my Board of Directors whom I consulted on the subject before sending those suggestions, I think, to Mr. Richey, I have no copy of those suggestions. They were sent to Mr. Richey because at that time we were members of the Allied States, and he was acting as secretary for that organization.

I was at the Federal Trade Conference in New York and I was named as an alternate on the Contract Committee. The members of that Committee were chosen by an election among the unaffiliated group.

Q. Were any instructions given by the unaffiliated group to the men elected on the Contract Committee?

A. I heard of none at the time. I was out on committee and sub-committee work a great deal during the conference. I was a member of the Resolutions Committee, and several sub-committees; and had to work a great deal on the outside.

No instructions were given to me with the one exception that I remember in the election time where, of course, I [fol. 724] was present. That was that we should all, both members and alternates, attend all meetings and all conferences of the Contract Committee. I attended every [fol. 725] meeting of that Committee and also attended the meeting in New York called in 1928, in which a paper with reference to the contract was signed. What transpired at the meeting at the time the agreement was signed is as follows:

The Committee had adjourned at Chicago after passing a resolution in which both the distributor and exhibitor members came to an agreement tentatively approving the contract with the exception of the Arbitration Clause, and one or two other clauses upon which there was some disagreement. We were to meet in June but we did not meet then. There was a considerable protest raised. I sent a number of letters and wires, myself; and finally I received a wire from Mr. Yamins, who was a member of that committee. I received a wire from him that the committee would meet in New York, I believe, October 1st. That happened to reach me about fifty hours before October 1st, and I had to do considerable hustling, as it takes forty-eight hours to come from Texas, but I got there.

The Committee met one afternoon about one o'clock or one-thirty, I guess. The following were those present: Mr. Sidney Kent; Ned Depinet; Mr. [illegible]eist for the distributors; and Mr. Bob Cochrane, who was the leader of the distributor group; three members of the Exhibitors Committee, Mr. Yamins; Mr. Bernstein, Mr. Biechele, Mr. Woodhull, who was president of the Exhibitor Group at the

Trade Conference; myself, the only alternate of the Exhibitor Group; Mr. Pettijohn, and Mr. Hays. I think that was the entire list of those present. That is my recollec- [fol. 726] tion. We exchanged ideas that afternoon. The fact of the matter is, if you want to go into it a little bit more, we had felt in Chicago that the only possible way of obtaining the right kind of arbitration was a well-balanced force on each side of that arbitration. The distributor group had that, in the Hays office. The exhibitor group had it only in spots, scattered all over the country.

My idea was if we could, by some means or other, form a strong, well-financed exhibitor balancewheel on the other side of the arbitration, it really did not matter very much whether we had a good contract or a bad contract. It could be well balanced in its workings. So the proposition was put up at Chicago and the one on which we separated was a proposition toward the financing of those exhibitor organizations.

The recess between Chicago and New York was supposed to have been taken up by both of us trying to find a means of thoroughly financing exhibitor organization work in connection with our approval of the Arbitration Clause in the contract and one or two others besides. So we met that first afternoon in New York, and exchanged those ideas, giving our plan for exhibitor financing through the contract, because we were on the Contract Committee. We adjourned that afternoon to meet again the following morning. On the following morning the proposition was entirely rejected by the Distributor Group; and the Exhibitor Group finally set their seal of approval on the contract as is.

[fol. 727] Q. Will you state more of the substance of the discussions at that meeting?

A. It is a little hard. I was sort of under the gun. They kept at me pretty strong for about two hours. They said I was blocking the whole harmony of it.

Q. Who is "they?"

A. The distributor group. Mr. Hays, Mr. Pettijohn, Mr. Cochrane, Mr. Feist, Mr. Kent, Mr. Depinet, they all of them addressed speeches at me. They said I was blocking the harmony and keeping them from arriving at an agreement, and I finally told them I was an alternate, and they

did not have to ask my permission.

Q. Did you sign the agreement?

A. I did not.

Q. That is Exhibit E-1?

A. I did not sign it.

Mr. Grosvenor: He is an alternate. His principal signed it.

The Court: What is the date of that?

Mr. Grosvenor: This is an agreement of October 5, 1928.

The Witness: At the Contract Committee meeting in Chicago the first proposal of the Exhibitor Group with reference to the Arbitration Clause was that it should be stricken out. The suggestion was that the Arbitration Clause be stricken out but the Exhibitor Group later receded from that position. The reason was that the Distributor Group in a very well-worded statement called our attention to the fact that the resolution which created the Contract Committee had endorsed arbitration; and therefore, we did not have the right or the power to go behind the very resolution which created us. We obtained legal counsel upon this, and [fol. 728] they advised that that was correct.

Cross-examination.

By Mr. Grosvenor:

I have served on the Arbitration Board, in Texas, and appointed the members. I have been through part of the trial here, being here all the time, but I have not attended every session. I heard Mr. Douglas testify.

I was present when the principals of this Committee of which I was an alternate, signed these contracts, signed the contract of March, 1928, and the Rules and Regulations. There were no alternates present in New York with the exception of myself.

Mr. Grosvenor: I will offer in evidence, your Honor, these minutes of the meetings. They are not minutes, but these proposals that Mr. Hess has testified to and this witness has testified to. It is the report of the meeting held in Chicago, January 31st, and February 6th, 1928; and February 15th to 21st, 1928. You have a copy, Mr. Thompson.

(Marked Defendants' Exhibit N-1.)

[fol. 729] New York, March 25th, 1929—10:30 A. M.

Trial Resumed

JOSEPH M. SEIDER, called as a witness on behalf of the plaintiff, in rebuttal, having been duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

I am a theatre owner in New York and New Jersey and am interested in seven theatres. I operate two myself in Long Island and have been in the business over ten years. I am connected with the Motion Picture Theatre Owners of New Jersey and have been a member of that organization eight years. I am president of it. We were a member of what has been referred to as the National Association and I was also an officer of that being the national business manager and chairman of the Administration Committee, during 1926 and 1928. I was not chairman in 1925. I was a member of the Board of the Association in 1925, and was connected with negotiations during the latter part of 1925, for what is called the Standard Exhibition Contract. I carried on negotiations for quite a long period, both individually and as a member of the committee. The members of the committee were residents of other places and when they were not in New York I carried on the negotiations alone. During this period I dealt mostly with Mr. Hess. At the start of those negotiations the question of charge in the arbitration system was brought up by me; I suggested that the Arbitration Committee be composed by the theatre owners [fol. 730] appointing one member, the distributors one member and these two, selecting a third. The proposal was not adopted and I was advised that any change in the principle [fol. 731] of the arbitration plan then in use would not be considered. Some changes in slight details in the Rules of Arbitration were made.

I was at the Federal Trade Commission conference as a member of the Exhibitors' Group. Resolutions were adopted by the Exhibitors' Group with reference to the Contract Committee operations.

No formal minutes of the Exhibitors' Group were written up and none kept.

There were two resolutions adopted, with instructions to the Contract Committee, one was that they would vote unanimously on any question proposed, and another was that they do not agree to any contract until they send a draft to every member of the unaffiliated group. Those resolutions were adopted by the unaffiliated Exhibitor Group and were not discussed in the conference at all. After the Committee was selected, on the last day of the conference of the unaffiliated group, after the resolution passed, discussion was brought up as to the functions of the Committee. That was simply instructions to the Committee. The unaffiliated group scattered to various parts of the country, and they wanted to be advised as to the caucus and wanted to be advised prior to the contract being adopted.

In Bayonne there are three theatres and I operate two out of the three; I have contracts for major products, that is, for pictures, with four distributors for both theatres. I play the same product in both theatres. I have contracts [fol. 732] with R. K. O. Pathe, Universal, Tiffany and Hollywood. That is the Columbia Pictures. There are five in all. The other theatre plays the balance, namely, Famous Players-Lasky, Metro-Goldwyn-Mayer, First National, Warner Brothers and Fox. Outside of those companies there are no distributing companies whose products were furnished or who would furnish the features as a basis of a program.

Q. Mr. Seider, I show you Defendants' Exhibit S, being the contract that is printed as Exhibit 1 at the end of the Answer, signed by a number of gentlemen; this is the agreement of February 6th, 1926, and I direct your attention to the signature thereon, is that your signature?

A. Yes, sir. I signed that document at the Union League Club. I have been here during the testimony during part of the trial. All the other gentlemen whose names appear on that document, were present at that meeting. I signed this agreement after the negotiations in 1925 and 1926 and my conferences with Mr. Hess, and I had conferences with many other people in regard to the contract, the new form of contract, with both distributors and exhibitors. I was present at the Federal Trade Conference in 1927; I was present at the meeting of the whole conference when this exhibitors' resolution 6 was adopted, and was there when the vote was

east. I was not the one gentlemen who voted "no". I voted in favor of it. I follow the trade papers and they reported the meetings of the Contract Committee in January and February at Chicago in 1928. I knew the Committee was meeting there but did not know that the Committee had signed or approved the contract. I think I was there pre-[fol. 733] pared to go abroad or I did leave, I am not sure; I did not follow that very closely. I believe it was adopted shortly after. I knew they agreed to some form of agreement.

Q. Were you president of this New Jersey Association in 1926, when you signed this agreement in February, 1926, at the Union League Club?

A. No, I believe I was national business manager at the time. I represented the national organization.

Q. In those negotiations, you represented the national organization?

A. Yes, sir, I was chairman of the Contract Committee for the national organization.

Q. When you signed the agreemnet of the new Standard form of contract?

A. Yes.

Q. You were also prominent in the New Jersey Association, were you not?

A. I was ex-president at that time.

Q. These men whose names appeared on the contract in February, 1926, were leading exhibitors in the country, were they not?

A. I could not say that all of them were.

Q. There were many of them who were very important men?

A. Most of them were very important.

Q. And had been important for some years in representing the exhibitors in matters of general interest to the exhibitors?

A. Yes, sir.

Nathan Yamins, called as a witness on behalf of the plaintiff in rebuttal, having been duly sworn, testified as follows:

[fol. 734] Direct examination.

By Mr. Thompson:

I am a theatre owner in Fall River, Massachusetts. I own five theatres at present and I operate them myself. I have been in the business since 1917 I was a member of the Contract Committee that was selected at the Federal Trade Commission Conference. I did not attend all the meetings of the Contract Committee in Chicago. I started with the Contract Committee but was called back on account of the [fol. 735] conflagration that hit Fall River and destroyed one of my theatres. And I left about two days before they adjourned, but I returned and resumed negotiations at the conference held again at Chicago. After the Contract Committee was adjourned nothing was done with reference to the proposal for financing exhibitor associations. At Chicago the Contract Committee tentatively approved the contract including the clause for arbitration and another clause that they had seriously objected to with reference to taxation. Those are the clauses numbered 16 and 18 in the now Uniform Contract. They withdrew their objections to it and agreed to tentatively approve the contract provided that some method was worked out between then and June 1st,—they adjourned in February,—for properly financing exhibitor organizations, so that they could take care of the arbitration matters properly and select arbitrators and take care of the interests of the exhibitors in arbitration.

The meeting was not held in June; but I had a meeting with Mr. Hess and Mr. Cochrane and Mr. Woodhull in June, because of the fact that that meeting had not been held; and in that meeting we entered into an agreement that each group was to submit some plan for working out the proper financing of the exhibitor organizations; and that each group was to submit their plans to the chairman of their respective groups on or about August 1st, I believe. That the plans submitted were to be in turn turned over by the chairman of one group to the chairman of the other group, so that they could be considered by the members of the Contract Committee. Then a meeting was to be called of the Contract Committee on August 20th, the purpose for this was to eliminate the necessity of having the [fol. 736] Contract Committee in the City of New York dur-

ing the summer season discussing all these things when they could have considered them at home.

The Contract Committee was not called August 20th; and I received several requests from exhibitors and demands for meetings of the Contract Committee. I received a letter from Mr. Pettijohn, and I answered that letter to Mr. Pettijohn; but Mr. Woodhull from whom that letter came,—I am not sure about that,—I believe Mr. Pettijohn mailed it to me, but he mailed the original to Mr. Woodhull; and then Mr. Woodhull also mailed a copy of the letter to each member of the Contract Committee. In respect to that letter I wrote to Mr. Woodhull and told him that on account of the proximity of the theatre owners meeting that was to be held when the representatives of the Exhibitor Group would be called upon to make an accounting of their work on the Contract Committee, that it was absolutely important that the meeting of the Contract Committee be held, and the matter finally disposed of so that this accounting could be held.

In reply to that on October 2nd or 3rd I received a telephone call from Mr. Woodhull, who asked me if I could be in New York on October 4th to attend this meeting. He told me over the phone that Mr. Bernstein and Mr. Biechele, the other members of the Contract Committe, were in New York at the time. I stated that I would be there, and I came to New York, and we held that meeting in New York when we discussed this matter.

At that time the best that could be done was a proposition that was not acceptable to me personally and to other mem- [fol. 737] bers of the Exhibitors there. That was suggested by Mr. Pettijohn, and his proposition was that enough of the affiliated theatre owners controlled by the chains could, through New York influences, be induced to join state organizations, so that the additional amount of dues coming in would help to finance the exhibitor organizations; and he felt that that would raise enough funds to take care of it. General Hays then agreed to have a contact man appointed with offices in his offices. That contact man was to be appointed only with the approval of the Contract Committee, whose business it was to see that this arrangement was carried out; and that the affiliated exhibitors throughout the country were brought into membership in state organizations, so that they could pay dues without vote, without

interfering with the independent policy of the theatre owner organizations; and he was to also be the contact man in relationships between the independent exhibitors and producers. This was October 4th, 1928; and to my knowledge nothing has been done to this date.

There had been two plans submitted by the exhibitors but generally along the same lines. The exhibitor organizations submitted a plan at Chicago of adding on to the film bills, I believe, either one or one-half per cent of the amount of the film bill. That fund was to be equally divided between the distributors on one side and the exhibitor organizations on the other side; and that was to take care of the arbitration matters. That was seriously objected to; and nothing was done along those lines. As a result of my conference with Mr. Hess and Mr. Cochrane and Mr. Bern- [fol. 738] stein, we submitted a plan; and Mr. Cole submitted a plan, or had a plan, but it was generally along the same lines. The general idea of it was a fee system to be filed, a fee to be determined upon by the Committee; and that fee was to be filed in every single case that was filed. Both parties were to file it. I believe the arrangement was both parties were to file it; and then in addition to that a certain percentage of the award was also to be assessed against one of the parties. I am not just certain how that was to work out; but I believe I have somewheres Mr. Bernstein's plan. I think I have Mr. Bernstein's suggestion here in the files. That was to go toward the support of the arbitration. That plan was also discussed at Chicago; and it was discussed at the New York meeting. It met with the favor of some of the members of the Contract Committee. If I am not mistaken Mr. Sidney Kent was in favor of it; but finally through Mr. Pettijohn's interjection into the picture, the plan did not carry; and the other plan was adopted.

Cross-examination.

By Mr. Grosvenor:

I was at the Federal Trade Conference in 1927 and voted for the resolution directing the appointment of this Contract Committee. I attended the meetings in Chicago and I signed at the close of those meetings on February 20th, as

a member of the Contract Committtee, Defendants' Exhibit A-1 "We, the undersigned members of the Contract Committee, have agreed upon the Standard Exhibition Contact:" I signed also at the end of the meeting, at the conclusion of the meeting, the agreement on the Rules of Arbitration being Defendants' Exhibit B-1. That is my signature. [fol. 739] After these meetings that I have referred to in October, after the meeting in October, this agreement, being the agreement of October 5th was signed, and there is a Mr. Richey's name on that. He is the secretary of the Unaffiliated Theatre Owners, secretary of that Committee, and he was there and also signed. I do not recall at that meeting if the suggestion was made that Mr. Richey become the contact man that you referred to. A suggestion was made. I do not know whether Mr. Richey was offered that position, but I never heard of that until perhaps within a week. All I know is that I had a talk with Mr. Richey,—whether it was so or not I could not say; I do not know—all I can say is that I had a talk with Mr. Richey and he told me about it. Whether it is a fact or not I do not know. The contact man was to be the point of contact between the state exhibitor organizations and perhaps also the national organization and the producers. He was to see to it that the affiliated theatre owners throughout the United States placed their theatres into membership in the state organizations. They would pay dues but have no vote, and have no influence at all on the policies, but contribute to the support of the organization for the purpose of carrying out arbitration.

My theatre is in Fall River, Massachusetts, and I have served on the Board of Arbitration in Boston on a number of occasions within the last several years. I have served within the past year. Mr. Woodhull that I have referred to several times is the president of the so-called National Or- [fol. 740] ganization of Theatre Owners; he was present at the meetings in Chicago of the Contract Committee.

Q. You spoke of a suggestion that one per cent or one-half per cent be paid in by the distributors on their gross business. That is one or one-half per cent on their gross business to support the exhibitor organizations?

A. I did not say that, Mr. Grosvenor, I beg your pardon.

Q. I misunderstood you. What did you say?

A. I said that either one or one-half per cent was to be added to the film bill to be paid by the exhibitor.

Q. And that was then to go into support to the exhibitor organizations?

A. Half of it was to go in. It was to be collected by the distributors and paid by the exhibitors. Collected by the distributor and divided by him in certain percentages. The suggestion was, I believe, one-quarter to the National Organization; one-quarter or one-half to the National Organization, and the remaining three-quarters to the State organizations; but the distributor to get half of what was collected from the exhibitors.

Q. Was it called to the attention then of the exhibitor reprentatives that that would raise a sum of several million dollars a year?

A. It was pointed out that it would raise, I believe, it was about a million or so. I would not say several.

Q. It was a large sum anyway.

A. It was a large sum to be paid the exhibitors, yes.

Q. But which was to be collected by the distributors.

A. Collected by the distributors yes.

[fol. 741] Mr. Grosvenor: Thank you, Mr. Yamins; that is all.

Mr. Thompson: As government's Exhibit 48, we offer correspondence between Sidney S. Cohen and Will H. Hays, and report by Mr. Cohen of conferences with Will H. Hays, all relating to negotiations in 1922 and 1923, with reference to the Uniform Contract, consisting of pages 1 to 20 inclusive.

(Marked Plaintiff's Exhibit No. 48.)

Mr. Grosvenor: The defendants offer Exhibit G-1 heretofore marked for identification as an exhibit in evidence.

(Defendants' Exhibit G-1 having previously been marked for identification, now received in evidence.)

Mr. Thompson: In accordance with agreements made with counsel the other day, counsel for the government and defendants have submitted a number of additional letters to be included in Government's Exhibits 36, 36-A and 36-C, which was referred to as "home office correspondence."

With the Court's permission, instead of reading the pages, it will just be added to the exhibits now in.

CHARLES C. PETTIJOHN, called as a witness on behalf of the plaintiff, in rebuttal, having been previously sworn, testified as follows:

Q. Mr. Pettijohn, will you please look at this and I will ask you if that has been corrected by you and is a correct transcript of the remarks that you made?

[fol. 742] A. That was at the Seventh Annual Convention of the Motion Picture Theatre Owners of America, which was at Los Angeles, two or three years ago.

Q. 1926?

A. You were there, you would remember the date.

Mr. Thompson: Instead of having the witness refresh his recollection and testify, we agree to put in this copy as an exhibit and this is now offered as Government's Exhibit 49.

(Marked Plaintiff's Exhibit No. 49.)

Cross-examination.

By Mr. Grosvenor:

That speech was delivered either June 3rd or 4th, 1926; it was made in the assembly room of the Ambassador Hotel [fol. 743] in the City of Los Angeles, California. The circumstances were these:

The Motion Picture Theatre Owners of America were assembled at that time and place for their annual convention. I was in Los Angeles at the time, and a few moments prior to the time I made this talk, as set out in those minutes, a vote was taken as to whether or not I be permitted to talk to the convention. It was carried, and I made the speech, and to the best of my recollection, those minutes set out just about what I said.

I went there for the purpose of making sure that the exhibitors there assembled knew what had taken place with reference to these first communications and negotiations with reference to a contract. I stated to them that there was no particular legal setup; that all the exhibitors had been invited to come in, and I had indicated to Mr. Hays who, I thought, were representative exhibitor leaders and

the whole thing was occasioned really because there was a movement on foot to ask that another contract be written for that year's product, and the first contract had just been put into effect. I wanted the membership, the body of the convention, to understand, as I told some of the leaders, that there would be, speaking for the distributors—there would be no further negotiations with reference to the 1926-27 contract.

The reason for that was that it would have required the taking up of all the printed matter out among the Exchanges, many of them signed by exhibitors, and junking them, even if another contract had been agreed upon for another year's product. It would have required us to do it all over again, and I wanted them to know why I made that statement, so that there would be no misunderstanding. [fol. 744] The reading of this speech has refreshed my recollection as to the circumstances. Mr. Aarons of the Pennsylvania organization, their business manager, has made a statement on the floor that he was instructing all of his members to strike out any portion of the contract that did not meet with their approval, and they would use every means possible and advise the exhibitors of the country to strike out any clauses not approved by the recognized committee of the National organization.

Then Mr. Cross made a motion that inasmuch as I was there and could represent the producers and distributors, he made a motion, as I remember it, or made a suggestion, that I be asked to discuss the contract.

And Mr. Sidney Cohen asked the courtesy of the floor for me, as I was the legal counsel of the producers and distributors and could give their viewpoint. That is reported in their minutes. There was no motion. Mr. Cohen, I think, made the suggestion, and they accepted it, and I talked.

Rebuttal proofs closed.

Sur-Rebuttal Proofs

Henderson M. Richey, called as a witness on behalf of the defendants in sur-rebuttal, having been duly sworn, testified as follows:

I live in Detroit and have been here throughout this trial. I was subpœnaed by the government and I heard Mr. Yamins' testimony this morning. Mr. Will Hays discussed with me on November 6, 1928, the position of contact man.

[fol. 745] In United States District Court Southern District of New York

[Title omitted]

Order Settling Record

Pursuant to the stipulation of the parties in the above-entitled action filed herein this 15th day of April, one thousand nine hundred and thirty, the Statement of Evidence in Narrative Form attached thereto is hereby approved as being a true, complete and properly prepared statement of the evidence received in the trial of this cause, and said Statement, the pleadings, papers and exhibits enumerated in the præcipe filed herein by Paramount Famous Lasky Corporation, et al., the pleadings, papers and exhibits enumerated in the præcipe filed herein by the United States of America, and the orders, motions, stipulations and other proceedings in this cause enumerated or mentioned in said præcipes, and this order, and the annexed stipulation, and acknowledgment of service of the citation on appeal, are hereby approved as constituting the evidence and proceedings in this cause material or pertinent to the appeal herein, and they are hereby made a part of this record of the appeal.

Alfred C. Coxe, U. S. D. J.

Dated New York, April 15, 1930.

[fol. 746] In United States District Court Southern District of New York

[Title omitted]

Stipulation re Transcript of Record

It is hereby stipulated and agreed that the foregoing consisting of all the papers in Deft's' & Petitioner's Præ-

cipes and in the order of April 15, 1930 signed by Hon. Alfred C. Coxe, U. S. D. J. is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated April 15, 1930.

Charles H. Tuttle, Attorney for United States.
Cadwalader, Wickersham & Taft, Attorneys for Deft's.

[fols. 747-749] Clerk's certificate to transcript of record omitted in printing.

[fol. 750] U. S. Dist. Court, S. D. of N. Y.

Defendants' Exhibit "A"

Blanket Contract

Associated First National Pictures, Inc. (a Delaware Corporation)

Agreement made in triplicate the day and year written below, between Associated First National Pictures, Inc., hereinafter called the "Distributor," and the undersigned Exhibitor, hereinafter called the "Exhibitor."

First. The Distributor agrees and hereby does grant to the Exhibitor the license to exhibit one copy of each motion picture production listed in paragraph 12, Column "B," in and only in the theatre mentioned in said paragraph. The Exhibitor agrees to exhibit said productions in said theatre, for the number of consecutive days stated in Column "C" of said paragraph 12 opposite the name of each production, and to pay for the license to exhibit each of said productions the sum specified in Column "D" of said paragraph 12 opposite such name as provided in paragraph 14.

Third. The Exhibitor agrees to purchase or lease from the Distributor, at list prices all lithographs, posters, photographs, slides, lobby displays and other advertising accessories, and to post and distribute the same.

The Exhibitor agrees not to use any advertising accessories in connection with any of the said productions except

such as are leased from, sold by, or approved by the Distributor. The Exhibitor further agrees not to sell, lease, rent, lend or give away any advertising accessories leased or purchased from the Distributor, under any circumstances whatsoever. Upon the breach or the attempted breach of this provision by the Exhibitor, the right and title to the immediate possession of such accessories shall revert to the Distributor, who may retake the same wherever found, and in addition may at its option cancel this agreement.

Fifth. Any claim by the Exhibitor arising hereunder shall be presented in writing by registered mail to the Distributor at the Exchange where this contract was entered into for adjustment within 10 days after the occurrence of the act, event, or default upon which said claim is based, which notice shall give in detail the time when and place where said claim arose and nature of the claim so asserted; and no action or proceeding shall be commenced, prosecuted or maintained until the expiration of 30 days from the receipt by the Exchange of the notice above provided for. No action or proceedings shall be maintained by the Exhibitor on any claim arising hereunder unless the same shall be commenced within 90 days after the receipt by the Exchange of the notice of claim and demand for adjustment herein provided for.

It is expressly agreed that this agreement and each and every term and provision thereof, shall for all purposes be deemed an agreement made, executed and delivered in the State of New York, and shall be construed according to the laws and statutes thereof. All differences and disputes arising hereunder involving claims by the Exhibitor against the Distributor, shall be prosecuted solely in the courts of the State of New York, to the jurisdiction of which the Exhibitor hereby submits.

Sixth. The Exhibitor agrees to return to the nearest branch of the Distributor by the fastest reliable means of transportation, with the container properly addressed, all prints of motion pictures and all appurtenances furnished by the Distributor, immediately upon the termination of the authorized run of the respective productions. The Exhibitor shall pay all delivery charges both ways.

Should the Exhibitor retain any motion picture delivered hereunder or under any other contract between the parties

hereto beyond the authorized run, or in case any print of any such motion picture delivered to the Exhibitor is run at any theatre other than the one named herein while in the possession of the Exhibitor, the Distributor may forthwith revoke and terminate the license to exhibit any further productions under this contract, and under any contracts between the parties hereto in force at the time of such breach, and the Exhibitor shall forthwith pay to the Distributor for each day of such use or retention four times the rental per day of the authorized use. It is agreed that the termination of the license as herein provided shall in no way relieve the Exhibitor from the performance of any obligation hereunder or under any contract above mentioned; nor shall a waiver by the Distributor of a breach of the agreement not to retain any print constitute a waiver of the condition not to exhibit any print at any theatre other than the one named herein; nor shall any waiver be construed to be a continuing waiver or a waiver of another or subsequent breach of the above named or any other condition of this or any other contract between the parties.

Eighth. The Exhibitor agrees to return all productions delivered by the Distributor in the same condition as they are received, reasonable wear and tear excepted. The Exhibitor shall pay to the Distributor as liquidated damages five cents (5c) per lineal foot of film as the cost of replacement of each lineal foot of film destroyed or injured in any way while the same is in possession of the Exhibitor and shall pay for any reels, cans, or shipping cases lost, destroyed, or injured while in the Exhibitor's possession the actual cost thereof.

Eleventh. The Distributor reserves the right to demand and receive from the Exhibitor cash security in an amount to equal the value of the films at any one time in the possession of the Exhibitor not to exceed $500 as protection for its property while in the possession of the Exhibitor, and in the event of the failure of the Exhibitor to furnish and deliver such security to the Distributor within 7 days after written demand made by the Distributor upon the Exhibitor, this contract shall, at the option of the Distributor, upon written notice to that effect mailed by the Distributor to the Exhibitor, be deemed ipso facto terminated and can-

celled and at an end without further liability on the part of the Distributor.

[fol. 751] U. S. Dist. Court, S. D. of N. Y.

Defendants' Exhibit B

License For Exhibition of Paramount Pictures

Second. The Exhibitor hereby absolutely reserves for the Distributor the dates specified in the schedule and agrees to exhibit the said pictures, in said theatre, on said dates. On two weeks' written notice to the Exhibitor, the Distributor may, from time to time, interchange said dates and pictures and the Exhibitor agrees to exhibit said pictures accordingly.

The Exhibitor agrees to pay for the license to exhibit each of the said pictures, the sums specified and computed as provided in the said schedule. Gross receipts shall consist of all sums (exclusive of admission taxes collected) received by the Exhibitor at the theatre or elsewhere, for admission to said theatre on the dates specified. Sums set forth in Column "D" are payable at the above named Exchange seven days in advance of exhibition dates set for the respective pictures. Sums referred to in Column "F" are payable at said Exchange immediately following the exhibition of the respective pictures.

Fourth. * * *

(5) The Exhibitor agrees to return all positive prints, containers, et cetera, in the same condition as they were received, except for reasonable wear and tear due to proper use thereof. The Exhibitor shall pay to the Distributor the sum of five cents for each linear foot of print not returned, or destroyed or injured in any way, in the interval between delivery thereof to the Exhibitor and redelivery thereof to the Distributor. Such payment shall not transfer title thereto or any interest therein to the Exhibitor or to any other party.

Fifth. This license is personal to the Exhibitor and may not be assigned to or exercised by any other party whatsoever without the written consent of the Distributor. The

loss or transfer by the Exhibitor of its interest in the above mentioned theatre or in the operation thereof shall not relieve the Exhibitor from his liability and obligations under this agreement; but the Distributor may license any of said pictures to the Exhibitor's successor at said theatre, for the account of the Exhibitor, and the Exhibitor shall be liable for any loss of revenue that may result therefrom.

Sixth. If the Exhibitor shall default in the performance or observance of any term, agreement or condition herein contained, or in the performance of any other contract now or hereafter existing between the parties hereto, the Distributor may withhold delivery of any pictures until such default shall have been cured, or may terminate this agreement and license by mailing or delivering to the Exhibitor a written notice of its intention so to do, and may retain all moneys theretofore paid by the Exhibitor hereunder. The rights and remedies herein enumerated shall be in addition to and not in lieu of any other provisions hereof and any other rights and remedies which the Distributor may have at law or in equity.

Waiver by the Distributor of any default or any consent given by the Distributor shall be a waiver or consent in the specific instance only.

Seventh. Any claim by the Exhibitor arising hereunder shall be presented to the Distributor by written notice served by registered letter, addressed to the Distributor at its above named Exchange, within twenty (20) days after the occurrence of the act, event or default upon which said claim is based; said notice shall set forth in detail the time when and the place where said claim arose and the nature and substance of the claim asserted. The giving of such notice in the manner and within the time hereinabove described and limited shall be a condition precedent to the maintenance of any action or proceeding upon such claim. No action or proceeding shall be commenced until the expiration of sixty (60) days from the date of such notice and no such action or proceeding shall be maintained on such claim unless commenced within six (6) months after the date of such act, event or default.

Ninth. The Exhibitor agrees to pay to the Distributor on execution hereof the sum of —— Dollars ($—), as payment on account of the sums last payable hereunder, but the Distributor may at any time apply the whole or any part of said sum upon any claim which the Distributor may have against the Exhibitor, notifying the Exhibitor of such application.

In witness whereof that parties hereto have duly executed these presents the day and year first above written.

Famous Players-Lasky Corporation, by —— ——

[fol. 752] DEFENDANTS' EXHIBIT C

Home Office Copy

Contract for Super-Special Production 1922-1923

Admission Prices

Third. Upon the failure of the Exhibitor to play the picture in accordance with this agreement on the date fixed, the Exhibitor shall nevertheless be liable for the full guaranteed rental price and the Exhibitor shall forfeit any rights thereto and any protection to which he may be entitled and agrees that the Distributor in such event shall have the right to release the production immediately to other exhibitors who have contracted for the same in the same territory and the Distributor agrees to give the Exhibitor the privilege to play the picture at a later date to be agreed upon between the Distributor and the Exhibitor.

Ninth. The Exhibitor agrees to return the motion picture film in the same condition in which it is received, reasonable wear and tear excepted. The Exhibitor shall pay to the Distributor as liquidated damages the sum of 8 cents for each linear foot of film destroyed or injured in any way while the same is in the possession of the Exhibitor and shall furnish to the Distributor a sworn affidavit stating how the said film was destroyed or damaged. If the film exhibited hereunder is returned by the Exhibitor to any office of the Distributor in a damaged condition, it

shall be presumed that the damage occurred while in the possession of the Exhibitor unless the Exhibitor immediately upon receipt of the film shall send a report in writing thereof to the Distributor by registered mail setting out the nature and extent of the injury and describing the amount of footage affected thereby.

Eleventh. The Distributor reserves the right to demand and receive from the Exhibitor cash in an amount not to exceed $500.00 as protection for its property while in the possession of the Exhibitor, and in the event of the failure of the Exhibitor to furnish and deliver such security to the Distributor within seven (7) days after written demand made by the Distributor upon the Exhibitor, this contract shall, at the option of the Distributor, upon written notice to that effect mailed by the Distributor to the Exhibitor, be deemed ipso facto terminated and cancelled and at an end without further liability on the part of the Distributor.

Fourteenth. The exhibitor agrees not to transfer or assign this contract or any moneys paid hereunder without the written consent of the distributor.

[fol. 753] DEFENDANTS' EXHIBIT D

Branch Office Copy

Contract for Star Series and 20th Century Pictures
1921-1922

Witnesseth:

First. The Distributor agrees that it will during the year commencing on or about the — day of — 19 , furnish to the Exhibitor motion pictures featuring the stars named and not exceeding the number set forth in the following schedule:

* * * * * * *

and it hereby grants to the Exhibitor the license to exhibit one copy of each of the said films, at the above named

theatre only, for the number of days indicated and commencing with the production indicated after the name respectively of each star in the above schedule; continuing in the order that the balance of the productions are released, and the Exhibitor hereby agrees to take and exhibit each of the said pictures and to pay for such license to exhibit the sum per picture set opposite the name of each star in the above schedule, at least seven (7) days in advance of delivery of each picture.

Third. The Exhibitor has paid upon the signing hereof, the amount set forth after the name of each unit in the above schedule. These amounts to be applied as payment in advance in part or in full, according to price per picture stipulated in above schedule, for the last picture featuring each of the named stars, or the last picture of each series. The Distributor shall have the right to apply the same partially or in full for any damage which it has suffered by reason of any breach of this contract on the part of the Exhibitor, or may, at its election, retain the same in full as liquidated damage upon such breach, it being agreed that in the event of a breach of this contract the damages of the Distributor will be incapable of accurate computation. Such application of this fund shall not operate as a waiver of any of the rights of the Distributor or obligations to the Exhibitor hereunder.

Eighth. The Exhibitor agrees to return all motion picture films delivered by the Distributor in the same condition as they are received, reasonable wear and tear excepted. The Exhibitor shall pay to the Distributor as liquidated damages the sum of eight (8) cents for each lineal foot of the film destroyed or injured in any way while the same is in the possession of the Exhibitor and shall furnish to the Distributor a sworn affidavit stating how the said film was destroyed or damageed. If any film exhibited hereunder is returned by the Exhibitor to any office of the Distributor in a damaged condition it shall be presumed that the damage occurred while in the possession of the Exhibitor, unless the Exhibitor immediately upon the receipt of the film shall send a report in writing thereof by registered mail setting out the nature and extent of

the injury and describing the amount of footage affected thereby.

[fol. 754] Fifteenth. It is agreed by both the Exhibitor and Distributor that this contract is non-cancellable and that under no consideration can either party cancel this contract without the consent of the other party.

Seventeenth. The Exhibitor agrees that the Distributor has the right before signing this contract at the Home Office in New York, to eliminate from the contract any one or more units of service the prices and terms of which are not satisfactory to the Distributor. And it is further agreed that the eliminating of one or more units of service will not in any way affect the other units covered by this contract, and that the proposed contract as submitted to the Home Office of the Distributor, signed by the Exhibitor, shall be regarded as an offer on the part of the Exhibitor to accept the service on a unit basis, any or all of which may be rejected or accepted by the Distributor.

[fol. 755] DEFENDANT'S EXHIBIT E

Branch Office Copy

Contract for Super Special Production 1921-1922

Third. The exhibitor has paid upon the signing hereof, receipt of which is hereby acknowledged, the sum indicated above as guaranteed film rental plus 5 per cent. war tax as required by Section 906 of the Revenue Act of 1918.

Fourth. Upon the failure of the exhibitor to play the picture in accordance with this agreement on the date fixed, the exhibitor shall nevertheless be liable for the full guaranteed rental price and the exhibitor shall forfeit any rights thereto and any protection to which he may be entitled and agrees that the distributor in such event shall have the right to release the production immediately to other exhibitors who have contracted for the same in the same territory and the distributor agrees to give the exhibitor the privilege to play the picture at a later date to be agreed upon between the distributor and the exhibitor.

Sixth. The distributor agrees that it will use its best efforts to have a copy of the said picture to be shown by the exhibitor at the designated branch office for delivery to the exhibitor in time for the showing in the theatre aforesaid on the date stated in the notice hereinbefore referred to, but the distributor shall not be liable in any way for failure or delay in making deliveries of motion pictures in accordance with the terms hereof by reason of accidents, strikes, fires, orders of the Court, ruling of censors, delays of any common carrier or other causes beyond its control.

Seventh. The exhibitor agrees to deliver to the designated branch office of the distributor or to such other address as the distributor shall direct in writing, or to the nearest responsible express company, or parcel post station, or to the fastest messenger service with the container property addressed for reshipment, the print of the motion picture hereinbefore mentioned, together with any other appurtenances furnished to the exhibitor by the distributor for temporary use, immediatey upon the termination of the period fixed in this contract for the exhibition of such film. The exhibitor agrees that he will pay all delivery charges both ways. If the exhibitor shall use or retain the motion picture delivered hereunder beyond the period of this contract without the written consent of the distributor, or if the motion picture delivered to the exhibitor is run at any theatre other than the one mentioned herein, the exhibitor shall forthwith pay to the distributor for such use or retention, twice the daily pro rata amount accruing and payable per day for such motion picture under this agreement for each day or part of the day for such use or retention, and shall in addition, be fully liable for any and all damages which may result to the distributor by reason thereof.

Ninth. The exhibitor agrees to return the motion picture film in the same condition in which it is received, reasonable wear and tear excepted. The exhibitor shall pay to the distributor as liquidated damages the sum of 8 cents for each linear foot of film destroyed or injured in any way while the same is in the possession of the exhibitor and shall furnish to the distributor a sworn affidavit stating how the said film was destroyed or damaged. If the film exhibited hereunder is returned by the exhibitor to any office of the distributor in a damaged condition, it shall be

presumed that the damage occurred while in the possession of the exhibitor unless the exhibitor immediately upon receipt of the film shall send a report in writing thereof to the distributor by registered mail setting out the nature and extent of the injury and describing the amount of footage affected thereby.

Tenth. The exhibitor agrees not to transfer or assign this contract or any moneys paid hereunder without the written consent of the distributor.

[fol. 756] DEFENDANT'S EXHIBIT F

Goldwyn Cosmopolitan Distributing Corporation

Fourth. Upon two (2) weeks' written notice to the Exhibitor, the Exchange shall have the right, from time to time, to interchange said dates and pictures, and upon the giving of such notice, the Exhibitor agrees to exhibit said pictures in accordance with, and on the date(s) specified in, such notice.

[fol. 757] (e) The Exhibitor agrees in case print(s) or any part thereof is lost, damaged, injured or destroyed by fire or other cause, with or without the faults or negligence of the Exhibitor, after delivery to Exhibitor and/or while such print is in the Exhibitor's control or possession, to pay forthwith upon demand, to the Exchange the sum of four cents (4c.) for each and every linear foot of such print lost, damaged, injured or destroyed and such other loss or damage the Exchange may sustain thereby. The Exhibitor further agrees in case of such loss, damage or destruction to give immediate notice of the fact to the Exchange at its above named office.

(g) In case the Exhibitor fails to publicly exhibit any of the pictures herein provided for on the date(s) specified in said column numbered 7, and/or fails, as herein provided, to pay the rental price therefor specified in column numbered 3, and/or breaches any of the other terms, covenants or conditions of this agreement, the Exchange shall have the right forthwith to cancel and terminate this license with respect to the picture as to which such breach

shall have occurred, and or at the Exchange's option, the Exchange shall have the right forthwith to cancel and terminate this license with respect to all the pictures provided for in this license; or at the Exchange's option to designate within thirty days from the date of the Exhibitor's default new date(s) for the exhibition of such picture.

In case of any such default the Exchange shall be released from the restrictions contained in Article Fifth hereof and in such event the Exhibitor waives the provisions of said Article Fifth, and the Exchange shall not be required to deliver the print of the picture with respect to which the default occurred or any other picture (if this license is cancelled with respect to all other pictures) or to make or tender such delivery and the Exchange shall have the right to enforce all the provisions contained in this license and all other rights and remedies which it may have without being required to make or tender such delivery.

In the event of any breach of this agreement by the Exhibitor and the cancellation of this license, all rights of any nature, kind and description herein granted the Exhibitor shall immediately cease and terminate and shall forthwith revert to the Exchange, and the Exhibitor shall remain and continue liable and obligated to forthwith pay to the Exchange as liquidated damages the total of the sums (specified in column 3) opposite the title of each un-played picture and for the total of all sums theretofore due and unpaid under this license.

(h) It is agreed that this license and each and every term and condition thereof, shall not be assignable by the Exhibitor without the written consent of the Exchange first had and obtained; and the Exhibitor agrees that no sale, lease or other disposition of the theatre in this license specified shall be made by the Exhibitor except upon condition that the Purchaser or lessee shall assume and take over the obligations of the Exhibitor under this license. The Exhibitor's obligations however shall nevertheless continue unless and until the Exchange shall consent in writing to accept such purchaser or lessee as a substitute licensee hereunder.

(n) Any claim of the Exhibitor arising hereunder shall be presented in writing by registered mail to the Exchange

at its office, 469 Fifth Avenue, City and State of New York, for adjustment, within 10 days after the occurrence of the act, event or default upon which said claim is based, which notice shall give in detail the time when and place where said claim arose and nature of the claim so asserted; and no action or proceeding shall be commenced, prosecuted or maintained until the expiration of 30 days from the receipt by the Exchange of the notice above provided for. No action or proceeding shall be maintained by the Exhibitor on any claim arising hereunder unless the same shall be commenced within 90 days after the receipt by the Exchange by registered mail or telegram of the notice of claim and demand for adjustment herein provided for. Nothing herein contained shall be deemed to extend the limitation of subdivision (g) hereof.

(o) The Exchange reserves the right to demand and receive from the Exhibitor at any time a sum not to exceed $250 as security for the return of all property of the Exchange delivered, or to be delivered, hereunder, and/or for the faithful performance of this license by the Exhibitor. In the event of the failure of the Exhibitor to furnish the security demanded within seven days after demand, this license at the option of the Exchange may be terminated and cancelled, or the delivery of any picture(s) herein provided for may be suspended by the Exchange until the amount of such security is deposited with the Exchange.

(s) Irrespective of whether or not any print delivered to the Exhibitor hereunder shall have been exhibited at the theatre herein specified upon the same being found at any place other than at said theatre, the Exchange shall have the right forthwith to retake the same.

[fol. 758] DEFENDANT'S EXHIBIT G.—1920-21.

Goldwyn Distributing Corporation

[fol. 759] (g) In the event of a breach by the Exhibitor of any of the terms, covenants or conditions of this agreement, the Exchange shall have the right forthwith, without notice, to revoke this license and every part thereof, and

upon such revocation all rights of any nature, kind and description herein granted shall immediately cease and terminate and shall forthwith revert to the Exchange. Upon such revocation, or irrespective of such revocation upon said print being found anywhere other than at the theatre or place hereinbefore designated, the Exchange shall have the right to retake such print(s) wherever it may be found.

(l) The Exchange reserves the right to cancel and terminate this agreement on giving ten days' notice in writing to such effect to the Exhibitor, in the event that the production of any of the said motion pictures is prevented or the delivery thereof delayed by the illness, injury, incapacity, death or default of the artists, directors or other persons or corporations engaged in the production of the same, or for causes beyond the control of the Exchange. In the event of such cancellation the Exchange shall repay to the Exhibitor any sum paid on account of the right hereby granted.

(n) Any claim by the Exhibitor arising hereunder shall be presented in writing by registered mail to the Exchange at its office, 469 Fifth Avenue, City and State of New York, for adjustment within 10 days after the occurrence of the act, event, or default upon which said claim is based, which notice shall give in detail the time when and place where said claim arose and nature of the claim so asserted; and no action or proceeding shall be commenced, prosecuted or maintained until the expiration of 30 days from the receipt by the Exchange of the notice above provided for. No action or proceeding shall be maintained by the Exhibitor on any claim arising hereunder unless the same shall be commenced within 90 days after the receipt by the Exchange of the notice of claim and demand for adjustment herein provided for. Nothing herein contained shall be deemed to extend the limitation of subdivision (c) hereof.

(o) The Exchange reserves the right to demand and receive from the Exhibitor at any time a sum not to exceed $250 as security for the faithful performance of this agreement by the Exhibitor. In the event of the failure of the

Exhibitor to furnish the security demanded within seven days after demand, this agreement at the option of the Exchange may be terminated and cancelled.

[fol. 760] DEFENDANTS' EXHIBIT H.—1921-22

Goldwyn Distributing Corporation

Executive Offices, 469 Fifth Avenue, New York City

Fourth. The Exhibitor shall and hereby agrees to pay to the Exchange for the right to exhibit each of said motion pictures, for the number of days herein provided for, the sum per picture in the foregoing schedule set forth, as follows: The amount hereinabove agreed to be paid for the last picture of each of the artists, authors or motion pictures in the foregoing schedule set forth, upon the signing of this instrument by the Exhibitor; thereafter and at least seven days prior to the date or dates designated by the Exchange in the notice provided for in paragraph Third hereof, the sum for each of the pictures (except the last) in the foregoing schedule set forth.

[fol. 761] (g) In the event of a breach by the Exhibitor of any of the terms, covenants or conditions of this agreement, the Exchange shall have the right forthwith, without notice, to revoke this license and every part thereof, and upon such revocation all right of any nature, kind and description herein granted shall immediately cease and terminate and shall forthwith revert to the Exchange. Upon such revocation, or irrespective of such revocation upon said print being found anywhere other than at the theatre or place hereinbefore designated, the Exchange shall have the right to retake such print(s) wherever it may be found.

(l) The Exchange reserves the right to cancel and terminate this agreement as to any particular picture (upon giving ten days notice in writing to such effect to the Exhibitor) if the production of such picture should be prevented, or the delivery thereof be delayed, by the illness, injury, incapacity, death or default of any artist, director

or other persons or corporations engaged in the production of the same, or by any cause beyond the control of the Exchange. In the event of such cancellat-on, the Exchange shall pay to the Exhibitor any sum paid for the right granted to exhibit such picture.

(o) The Exchange reserves the right to demand and receive from the Exhibitor at any time a sum not to exceed $250 as security for the return of all property of the Exchange delivered, or to be delivered, hereunder, and or for the faithful performance of this agreement by the Exhibitor. In the event of the failure of the Exhibitor to furnish the security demanded within seven days after demand, this agreement at the option of the Exchange may be terminated and cancelled.

[fol. 762] DEFENDANTS' EXHIBIT I.—1922-23

Original Home Office Copy

3. Immediately upon the signing of this contract the first week's service becomes due and payable. The Exchange hereby acknowledges receipt of —— Dollars ($——), being the first payment on the above contracted service. All service is payable to the Exchange seven days in advance of play date and should payment not be made seven days prior to the date of playing, the amount of the license fee on this contract becomes due and payable immediately without regard to whether the entire service or any part thereof has or has not been rendered by the Exchange. The sum paid at the signing of this contract is not and shall not be considered as a deposit or advance as security for the performance of this contract by the Exhibitor, but is and shall be considered a part payment on account of the license fee due and payable immediately upon the signing of this contract without any right, title or interest whatsoever in the Exhibitor.

[fol. 763] Additional Terms and Conditions

1. The Exhibitor shall take good care of the films and if they are lost, destroyed or damaged (ordinary wear

and tear excepted) through any cause and whether or not such loss, destruction or damage be due to the negligence of the Exhibitor, shall pay the Exchange fifteen cents ($0.15) per linear foot of the film necessary to restore the production. The Exhibitor shall not permit any film or part thereof to be copied or duplicated and shall run the films, as supplied, without alterations or trimming, with the film title and copyright notice preceding and the trailer, if any, following.

7. The Exhibitor shall not assign this contract nor transfer the service covered thereby or any part thereof, nor sell or rent any supplies mentioned herein, except with the written consent of the Exchange.

10. Prior to the shipment of any film specified in this contract, the Exhibitor shall pay to the Exchange all monies due on the respective subject and on all other subjects theretofore supplied to the Exhibitor under this or any other contract between the parties hereto. In case such monies be not so paid, the Exchange in its discretion shall have the right to ship any film called for by this contract C. O. D. for the full amount due in accordance with this section, in which event the Exhibitor agrees to lift the same and pay all incidental charges.

12. The Exchange shall have the right at its option to cancel and terminate this contract in case the Exhibitor is in default in the payment of any monies due hereunder or under any other contract between the parties hereto; or in case the Exhibitor fails to return any film in his hands, under this or any other contract between the parties hereto, within the time herein or therein specified for the return of same or in case of any other default by the Exhibitor under this contract or any such other contract or in the event of the insolvency or bankruptcy of the Exhibitor or the appointment of a receiver for the Exhibitor or of its property, or the taking of or the levy upon the property of the Exhibitor by attachment, execution or other legal process.

13. Inasmuch as the Exchange is dependent for its ability to perform this contract upon the production of the pictures covered by this agreement, which may be prevented by the illness, injury, incapacity, death or default of the artists,

directors and other persons engaged in producing the same; and inasmuch as the performance of this agreement on the part of the Exchange may be prevented or delayed for reasons beyond its control, it is recognized by both parties that it is necessary for the Exchange to reserve the right of cancelling this agreement, either wholly or with respect to any one or more of said pictures covered hereby for one or more of said reasons. It is, therefore, expressly understood, provided and agreed that the Exchange may upon ten days' notice to the customer cancel this agreement, either wholly or with respect to any one or more of the pictures above specified; and that thereafter the Exchange shall be under no obligation to the customer in respect of the picture or pictures thus cancelled.

14. Any cancellation or termination of this contract shall be entirely without prejudice to and shall not affect any rights or claims theretofore accrued, nor shall the right to cancel or terminate this contract or the exercise of the same deprive the Exchange or be deemed to be a waiver of any other rights, claims or remedies, legal or otherwise that it may have in the premises. Except as herein provided, this contract is not subject to cancellation by either party.

17. The Distributor reserves the right to demand and receive from the Exhibitor additional security to equal the value of the film not to exceed $500.00 as protection for their property while in possession of the Exhibitor. In event of failure to furnish such security within seven days after demand, this contract shall, at the option of the Distributor, be deemed terminated, and at an end without further liability on part of Distributor.

[fol. 764] DEFENDANTS' EXHIBIT J

Second. The Exhibitor hereby agrees to pay to the Distributor at its office, at the times hereinafter specified, the license fees set forth in Column G in payment of the license and exhibition rights herein granted, as follows:

On the signing of this agreement — Dollars, and at least seven (7) days in advance of the exhibition date set, as hereinafter provided, of each of said productions, the

amount set forth in said Column G. The license fee payable upon the execution of this agreement shall be applied immediately as the payment of the license fee or fees, for the last production or productions hereinafter set forth.

A—Ref. No. B—Approximate No. of Pictures. C—Titles of Productions or Series. D—First Release No. E—Days Run. F—Playing Dates. G—License Fee Per Picture. H—Monies Received.

Fourth. The Distributor and the Exhibitor shall endeavor to set the date or dates when said copyrighted productions are to be exhibited, but in the event that the parties do not agree on said date, the Distributor reserves the right to set the date or dates when the said print of each of said production can be exhibited, and hereby agrees to give to the Exhibitor at least ten (10) days' notice of each of said dates, and the Exhibitor hereby agrees to exhibit said productions on the day set by the Distributor, and to pay the aforesaid license fee for said production, set forth in Column G whether or not the said production is exhibited or the said print used, unless prevented by some legally authorized Board of Censors or by some order or decree of some court of competent jurisdiction.

[fol. 765] Seventh. It is expressly understood and agreed that this contract shall be binding upon any firm, person or corporation which succeeds to the interests of the exhibitor in the theatre above set forth; but in the event of any sale, lease, transfer of interest or change of management of said theatre, the Exhibitor above named shall in no way be relieved from the full performance of each and all of the terms and conditions of this agreement, and any sale, lease, transfer of interest or change of management of said theatre without the written acceptance of this contract on the part of the purchaser, lessee or successor in interest of the Exhibitor above named, shall render the said Exhibitor liable to the Distributor as for a breach of this contract and payments herein agreed to be made by the Exhibitor for each and all of the pictures deliverable but not yet delivered to the Exhibitor shall become immediately due and owing from the said Exhibitor to the Distributor above named. Nothing herein contained shall be construed to discharge said Exhibitor from any and all of the terms

and obligations hereof, except upon the written agreement of the Distributor so to discharge said Exhibitor and to accept any successor in interest of the Exhibitor in his place and stead.

Thirteenth. The Exhibitor agrees to return all motion picture films delivered by the Distributor in the same condition as they are received, reasonable wear and tear excepted. The Exhibitor shall pay to the Distributor as liquidated damages the sum of six cents for each linear foot of film destroyed or injured in any way while the same is in the possession of the Exhibitor.

Fourteenth. Inasmuch as the Distributor is dependent for its ability to perform this contract, upon the production of the pictures above described, which may be prevented by the illness, injury, incapacity, death or default of the Artists, Directors, and other persons or corporations, engaged in producing the same, and inasmuch as the performance of this agreement on the part of the Distributor may be prevented or delayed for various reasons beyond its control, it is recognized by both parties that it is necessary for the Distributor to reserve the right of cancelling this agreement or any of the series, brands or productions herein set forth. It is, therefore, specifically agreed that the Distributor may, upon ten (10) days notice to the Exhibitor, cancel this agreement or any of the series, brands or productions herein contracted for. It is likewise agreed that in the event that the theatre shall have been destroyed or closed for any cause beyond the control of the Exhibitor, then and in that event the Exhibitor may cancel this agreement, by giving the Distributor ten (10) days notice. In the event of such cancellation by either of said parties, the parties shall thereafter be relieved from all further liability for the contract or for said series, brands or productions so cancelled. In no event, however, shall the Exhibitor be relieved from paying for such releases as have been actually had and used or such productions, series or brands as have not been cancelled, and the Distributor shall likewise be compelled to repay to the Exhibitor any sums remaining to the credit of the latter after the Exhibitor has cancelled, in accordance with the terms hereof.

Fifteenth. The Distributor reserves the right to demand and receive from the Exhibitor at any time a sum not to exceed Two Hundred and Fifty ($250.00) Dollars as security for the faithful performance of this Agreement by the Exhibitor. In the event of the failure of the Exhibitor to furnish security demanded within seven (7) days after demand, this Agreement, at the option of the Distributor, may be terminated and cancelled.

Sixteenth. The Exhibitor agrees not to assign this contract without the written consent of the Distributor.

[fol. 766] DEFENDANTS' EXHIBIT L

2. The Exhibitor pays to Pathe herewith as on account of the license fee payable in respect of the motion picture named for the last exhibition at the time and place above specified, or for liquidated damages as hereinafter set forth, the sum of dollars ($); the same upon condition that if Pathe does not accept this application, the sum so paid herewith shall be returned to the exhibitor. In case of default or breach on the part of the exhibitor in any agreement herein or any of the terms or conditions hereof, all loans of positive prints hereunder shall terminate, and all positive prints loaned to the exhibitor and not yet returned to Pathe shall be forthwith surrendered, returned and delivered by the exhibitor to Pathe; the license specified herein shall cease and be of no further force and effect, and said amount accompanying said application shall constitute, and it is hereby paid as Pathe's liquidated damages for such default or breach. The license fee payable in respect of each of the motion picture subjects licensed hereunder shall be due and shall be paid at least seven days in advance of the date hereinabove specified for the exhibition of the same.

7. The exhibitor agrees to deposit with Pathe the sum of $250 in cash or by certified check as security for the safekeeping and return by the exhibitor of the positive prints lent or to be lent to the exhibitor hereunder if and when Pathe shall by three days previous notice demand such security. If, after such demand, the exhibitor shall fail

to furnish such security, Pathe may at its option revoke the license granted to the exhibitor hereunder, and this agreement shall thereupon terminate and come to an end.

[fol. 767] 4. In the event the films named herein or any part thereof are destroyed or damaged in any way while in the possession of the exhibitor, the exhibitor shall furnish Pathe a sworn affidavit stating how said film was destroyed or damaged, and further pay to Pathe, in addition to any other provision for or right to damages, fifteen cents (15c) for each lineal foot of film so damaged or destroyed.

6. The films loaned to the exhibitor as aforesaid shall not be projected at a greater rate of speed than 1000 feet in fifteen minutes.

7. If the exhibitor or any one claiming under or against the exhibitor shall withhold from Pathe any film after the time when the same is due to be returned to Pathe as herein provided, the exhibitor shall pay to Pathe as liquidated damages for such withholding, in addition to any other damages liquidated or otherwise for which provision is made herein, or to which Pathe may be otherwise entitled, the sum of Twenty Dollars ($20.) for each reel of film so withheld, plus a sum of money equal to the license fee provided herein for each day that such film shall be so withheld.

12. Pathe shall have the right to cancel and terminate this license and all rights of the exhibitor hereunder upon default by the exhibitor in the payment of any monies due hereunder or otherwise by the exhibitor to Pathe, or in case the exhibitor fails to return as aforesaid any films loaned to or in the hands of the exhibitor under this license or any contract between the parties hereto within the time appointed herein or therein for the return of same, or in case of any other default by the exhibitor under this license or any contract between the parties hereto.

[fol. 768] DEFENDANT'S EXHIBIT M

Second. The Exhibitor agrees to pay to the Distributor, upon execution hereof, the amounts above set forth as pay-

ments on account, the receipt whereof is hereby acknowledged. The sums so paid are not deposits or advance payments as security for the performance of this contract by the Exhibitor, but constitute special credits in favor of the Exhibitor which shall, unless otherwise applied in accordance with the provisions hereof, be applied respectively toward payment for the license with respect to the last photoplays in each series deliverable hereunder. The Distributor shall have the option, however, of deducting from such credits any sums which may become payable to the Distributor hereunder or the amount of any damage or liability, liquidated or unliquidated, which may be suffered or incurred by the Distributor as the result of any breach by the Exhibitor of any of the provisions hereof. It is understood, however, that no such deduction by the Distributor shall be construed as a waiver by the Distributor of any default or breach by the Exhibitor or of any legal remedy of the Distributor. In the event of any such deduction, the Distributor may require the Exhibitor, upon five days' written notice by the former to the latter, to make good the amount so deducted, and upon failure by the Exhibitor to make good such amount within the period stated, the Distributor may, at its option, forthwith, by written notice, revoke the license hereby granted, retaining, at its option, all sums remaining in its hands to the credit of the Exhibitor, as liquidated damages.

Fourth. The Distributor reserves the right to demand and receive from the Exhibitor an additional payment on account, equal to the value of film at any time in the Exhibitor's possession hereunder, not exceeding $250.00, to be applied as above provided. In the event of the Exhibitor's failure to pay such additional sum within seven (7) days after demand, this contract shall, at the option of the Distributor, be deemed terminated and at an end without further liability on the part of the Distributor.

[fol. 769] Fifth. The Distributor agrees that it will use its best efforts to deliver F. O. B. to the Exhibitor, or messenger, express company, or other carrier acting as agent for the Exhibitor, a positive print of the photoplay next to be shown by the Exhibitor in time for the showing in the theatre aforesaid on the date or dates designated as hereinabove

provided; but the Distributor shall not be liable for failure or delay in making deliveries of photoplays in accordance with the terms hereof, resulting from the elements, accidents, strikes, fires, court orders, censor rulings, delays of any common carrier or other causes beyond its control, including the failure of the producer of said photoplays to make or deliver them or any of them to the Distributor, or of any of the above-named stars to appear therein, in time for release within the period above specified, or the failure of any prior exhibitor to return any photoplay to the Distributor, in accordance with the agreement made between the latter and such exhibitor. In any event the Distributer shall not be liable for more than an amount equal to the pro rata license charge for exhibitions lost. In no event shall the Distributor be obliged to deliver or the Exhibitor be entitled to receive or exhibit hereunder any photoplays not released by the Distributor during the aforesaid period of one (1) year.

Sixth. The Exhibitor agrees to deliver to the local branch of the Distributor, if there be such, or to the nearest proper express company, or to the fastest messenger service (with the container properly addressed for re-shipment), the photoplays hereinbefore mentioned, together with any appurtenances furnished to the Exhibitor for temporary use, immediately upon the termination of the period fixed for the exhibition of each of said photoplays, and to pay all delivery charges both ways. If the Exhibitor shall use or retain any photoplay delivered hereunder beyond the period stated in said notice, without the written consent of the Distributor, or shall fail to re-deliver or re-ship the same in accordance with the provisions hereof, or if any copy of a photoplay delivered to the Exhibitor is run at any theatre other than the one specified herein, in the interval between delivery thereof to the Exhibitor and re-delivery thereof to the Distributor, the Exhibitor shall forthwith pay to the Distributor, for such use, retention, failure or improper use, twice the amount provided to be paid per day for such photoplay under this agreement, pro rata for each day of such use, retention, failure or improper use, and shall hold the Distributor harmless on account of any damages resulting therefrom.

Ninth. Any claim by the Exhibitor arising hereunder shall be presented in writing by registered mail to the Distributor at the branch office where this contract was entered into, for adjustment within ten (10) days after the occurrence of the act, event, or default upon which said claim is based, which notice shall give in detail the time when and place where said claim arose and nature of the claim so asserted; and no action or proceeding shall be commenced, prosecuted or maintained until the expiration of thirty (30) days from the receipt by the branch office of the notice above provided for. No action or proceeding shall be maintained by the Exhibitor on any claim arising hereunder unless the same shall be commenced within ninety (90) days after the receipt by the branch office of the notice of claim and demand for adjustments herein provided for.

Tenth. Inasmuch as the Distributor is dependent for its ability to perform this contract upon the production of the photoplays above described, which may be prevented by the illness, injury, incapacity, death or default of the artists, directors and other persons or corporations engaged in producing the same, and inasmuch as the performance of this agreement on the part of the Distributor may be prevented or delayed, for various reasons beyond its control, it is recognized by both parties that it will be necessary for the Distributor to reserve the right of revoking the license hereby granted as to any or all of the photoplays deliverable hereunder. It is therefore specifically agreed that in any such event the Distributor may, upon ten days' notice to the Exhibitor, revoke said license and cancel this contract as to any or all of such photoplays. In the event of such revocation, both parties shall be relieved of all liability thereafter accruing hereunder with respect to the photoplay or photoplays as to which said license is revoked.

Eleventh. The Exhibitor agrees not to assign this agreement without the written consent of the Distributor. The Distributor may assign this agreement to any other person firm or corporation, provided that it shall turn over to such assignee all sums remaining in its hands to the credit of the Exhibitor, and that the assignee shall accept said sums upon all the conditions herein set forth, and shall assume and be bound by the terms of this contract, and that the Distributor shall remain liable to the Exhibitor and bound by the terms

of this agreement in the event of the default or breach of the terms of this contract by such assignee.

Fourteenth. In the event of the breach or default in performance by the Exhibitor of any of the terms or conditions of this agreement, the Distributor shall not be required to make a further delivery or tender of photoplays hereunder, and may also, at its option, by notice in writing mailed or delivered to the Exhibitor, revoke the license hereby granted with respect to any or all of the photoplays remaining undelivered hereunder, and shall also have the immediate right to the possession of the photoplays and prints thereof delivered to the Exhibitor hereunder and the right to revoke the license hereby granted with respect to such photoplays and to resume such possession with or without legal process as it may be advised, such resumption of possession to constitute revocation of said license for the purposes of this agreement; all without prejudice, however, to any other right or remedy of the Distributor by reason of such breach or default.

[fols. 770 & 771] DEFENDANTS' EXHIBIT X

Home Office Copy

Permanent No. —. Detroit Exchange, No. —.

United Artists Corporation

Application and Contract

5F 5100

Agreement, made in triplicate, this 11th day of Dec., 1922, between United Artists Corporation hereinafter referred to as "Distributor" and operating the La Salle Theatre at Detroit, Mich., hereinafter referred to as "Exhibitor."

First. Distributor agrees as follows:

(a) To grant and hereby grants to Exhibitor a license to exhibit a motion picture to consist of from 3,500 to 8,000 lineal feet of film entitled The Nut or such other title as

the owner of said motion picture may select, starring, produced by, Douglas Fairbanks, at the above named theatre only, for Dec. 28, 1922, successive days within
days of the date when said motion picture is released for exhibition purposes in New York City.

(b) To give at least 3 weeks notice to Exhibitor of the date or dates on which the latter shall be entitled to exhibit said motion picture in the theatre aforesaid:

(c) To use its best efforts to have a copy of the film, to be used by Exhibitor for the purpose of exhibiting said motion picture in the theatre aforesaid, at its nearest branch office available for delivery to Exhibitor on the date, or dates stated in the notice hereinbefore referred to.

Second. Exhibitor agrees as follows:

(a) To pay Distributor at its office in the city of New York for the aforesaid license the sum of $15.00.
Paid in full.

(b) To exhibit said motion picture only in the above named theatre and only on the date or dates designated by Distributor and to charge an actual minimum admission fee to said theatre of — cents upon said date or dates:

(c) To pay all delivery, express or other transportation charges for the delivery and the return of said film and other material or property used in connection with said picture and to return to the local branch of Distributor, if there be such, or to the nearest proper express company, or to the fastest messenger service, in a container properly addressed for reshipment to said person as Distributor may designate, the film of said motion picture in the same condition in which it was received, reasonable wear and tear excepted, together with any appurtenances furnished to Exhibitor by Distributor in connection with the exhibition of said motion picture, immediately upon the expiration of the period during which exhibitor shall be entitled hereunder to exhibit said motion picture in the theatre aforesaid; to pay to Distributor as liquidated damages the sum of 8c. for each lineal foot of film destroyed or injured in any way while the same is in possession of Exhibitor.

(d) Not to directly or indirectly permit, in any manner, each film delivered hereunder to be used in any theatre other than the one designated herein, without the written consent of the Distributor.

(e) To give the name of Douglas Fairbanks "Chief prominence" (and by "Chief prominence" is meant that said name shall be in larger letters than and at least twice the size of any other part of the subject matter in which said name appears) in all advertising and literature used in connection with the exhibition of said motion picture.

(f) Not to use or permit to be used any posters, lithographs, circulars or other advertising matter received from Distributor to advertise, announce, or exploit any motion picture other than that covered by this agreement;

(g) To make no changes and no interpolations, modifications, additions or eliminations of any kind in said motion picture or any part thereof including the title and sub-title, and always to exhibit said motion picture in the same order, arrangement sequence and manner as was the positive of said motion picture when received from Distributor;

(h) Not to assign this agreement without the written consent of the Distributor.

Third. It is mutually agreed that Distributor or owner of the said motion picture shall not be liable in any way for failure and delay in making delivery of the film covered by this agreement occasioned by accidents, strikes, fires, orders of court, ruling of censors, delays of any common carrier, or any other cause beyond its, his, her or their control. Failure of the owner or star of said motion picture to make delivery or failure of any prior exhibitor to return or deliver the film of said picture in accordance with the agreement made between such Exhibitor and the Distributor, shall be deemed to constitute a cause beyond the control of the Distributor or owner within the meaning of this paragraph.

Fourth. The Exhibitor herewith certifies that he has been informed by the representative of the Distributor, and the Exhibitor agrees, that this agreement is not and shall not be binding upon the Distributor or owner of said motion

picture until its contents are submitted to the President of the Distributor, (or such other officer of Distributor authorized to approve proposed contracts for the exhibition of the said motion picture) at its principal office in the city of New York, and accepted in writing by such President or other officer, or until this contract is executed in writing by such President or such other duly authorized officer of the Distributor. In the event of such proposed contract not being accepted by Distributor or owner of said motion picture, the Distributor will return the consideration paid upon the execution of this agreement by the Exhibitor within thirty (30) days from the date hereof, and this proposed contract shall be terminated and at an end. This contract when accepted as herein provided for shall be considered as made within the state of New York and its provisions shall be interpreted in accordance with the Laws of the State of New York.

Fifth. The delivery of accessories prior to receipt of approved copy of this contract shall not be considered as a waiver of conditions contained in paragraph four of this Contract.

Sixth. Change of original play dates by exhibitor constitutes a waiver of his protection rights.

In witness whereof, the parties hereto have signed and sealed this instrument the day and year first above written.

Herbert W. Travers, Sales Manager, United Artists Corporation. ———, Exhibitor. United Artists Corporation. Approved. H. Abrams, President, by J. H. Covelishn. Address: ———.

[fol. 772] DEFENDANTS' EXHIBIT P

Original Home Office Copy

Universal Film Exchanges, Inc.

Short Subject Contract

Population: Omaha. Seating Capacity: ——. Admission: ——. Salesman: Strickland. Run: ——.

Universal Film Exchanges, Inc.
Branch P.

This contract made in quadruplicate on the 6 day of Feb., 1922, by Universal Film Exchanges, Inc., hereafter called the Exchange and Andrus; hereafter called Exhibitor:

The Exchange agrees to lease and supply, and the Exhibitor agrees to hire and take, the motion pictures hereafter described for exhibition purposes exclusively and solely at the following theatre:

Name of Theatre, Rainbow; Location, Weeping Water, Nebr.

This agreement is made upon the following representations, terms, and conditions:

1. The Exhibitor hereby leases from the Exchange the following motion pictures for the terms, dates, and rental prices stipulated below according to the terms and conditions set forth on this contract, which are mutually agreed upon:

Subject	Brand	Starting Date	Day of week shown S M T W T F S	Price per day	Price per run	Terminating date
Sure Fire		Mar. 6-7	.... X X	.....	10,00	.....
The Fire Eater		May 5-6	..... X X	.....	10,00	.....
Across the Deadline		and	.....	.....	10,00	.....
Playing with Fire		every	.....	.....	10,00	.....
The Guttersnipe		other	.....	.....	10,00	.....
Millionaire		Fri. and	.....	.....	10,00	.....
Cheated Hearts		Sat.	.....	.....	10,00	.....
Dr. Jim		thereafter	.....	.....	10,00	.....
High Heels			.....	.....	10,00	.....
Walton			.....	.....	10,00	.....
Mayo			.....	.....	10,00	.....
Gibson			.....	.....	10,00	.....

Bal. to be used 2 a month

2. The terms and conditions set forth on the back hereof are to be taken and read as part of the terms and conditions of this agreement.

3. Immediately upon the signing of this contract the first week's service becomes due and payable. The Exchange hereby acknowledges receipt of — Dollars ($ —), being the first payment on the above contracted service. All service is payable to the Exchange seven days in advance of play date and should payment not be made seven days prior to the date of playing, the amount of the rental on this contract becomes due and payable immediately without regards as to whether the entire service or any part thereof has or has not been rendered by the Exchange. The sum paid at the signing of this contract is not and shall not be considered as a deposit or advance as security for the performance of this contract by the Exhibitor, but is and shall be considered a part payment on account of the rental price due and payable immediately upon the signing of this contract without any right, title or interest whatsoever in the Exhibitor.

4. Films shall be called for by the Exhibitor if in the same city as the Exchange. Otherwise, to be shipped by — Express or Parcel Post.

5. All transportation charges for shipment to and from place of exhibition shall be paid by the Exhibitor, excepting prepaid shipments from another exhibitor.

6. It is agreed that a playing or showing of any one of the above scheduled motion pictures at the theatre designated shall constitute a binding ratification of this contract on the part of the person, firm or corporation conducting the said theatre even though the person purporting to sign this contract on behalf of the said Exhibitor may not have had, at the time of such signing, the authority to bind the Exhibitor.

7. It is expressly understood and agreed by the parties hereto that there are no stipulations other than are contained in this contract and that verbal agreements and representations made by the salesman are not binding on either party.

8. This contract shall not be binding upon the Exchange until the same shall have been accepted by the Exchange, and such acceptance shall only be evidenced by the counter signature hereon by the Exchange Sales Manager at 1600 Broadway, New York City.

Recommended by H. Shefhalz, Branch Manager.
Approved at New York City. Date —— —, 192-. By —— ——, Sales Manager.
O. K., Mayer.

H. G. Andrus, Exhibitor. Universal Film Exchanges, Inc., by Strickland, Salesman.

[fol. 773] 1. In case a carrier be above named for the delivery of the films, said provision shall only apply in case the films are shipped direct from the branch of the Exchange. Shipment from any other locality shall be by such carrier as the Exchange may select.

2. The Exhibitor shall return each of the films loaned to the Branch Office of the Exchange negotiating this contract or to such other address as the Exchange may direct in writing, immediately after the close of the last performance for which the film is loaned. The Exhibitor shall be responsible for any and all delay in the delivery of each of said films at such branch office and shall be liable for all damages, losses and expenses sustained or incurred by the Exchange owing to any delay in such delivery, any losses of rentals suffered or damages caused by inability to make delivery to another, of such films, shall be considered part of the damages and losses sustained or incurred.

3. The positive films supplied in connection with this contract are merely rented to the Exhibitor who acquires no right, title or interest in same, other than particularly specified on the reverse side hereof. All Exhibitor's claims of whatsoever kind or nature shall be submitted in writing to the Exchange. The Exhibitor agrees under no circumstances to return any film C. O. D. Should the Exhibitor return or attempt to return film C. O. D., the Exhibitor thereby waives any and all alleged lien on any film and any and all moneys claimed to be due thereon, and any and all right, title and interest claimed thereto.

4. No scene titles or sub-titles of film loaned to the Exhibitor as aforesaid shall be cut or altered without the written consent of the Exchange.

5. The Exhibitor shall take good care of the films delivered to him and if they are lost destroyed or damaged prior to return to the Exchange at its branch office as above specified (ordinary wear and tear excepted), shall pay to the Exchange the actual cost of replacing the same in whole or in part or of repairing the same, as the case may be. The Exhibitor shall not permit any film or part thereof to be copied or duplicated and shall run the film as supplied.

6. If the Exhibitor, or anyone claiming under or against the Exhibitor, shall withhold from the Exchange any film after the time when same is due to be returned to the Exchange as herein provided, the Exhibitor shall pay to the Exchange as liquidated damages for such withholding, in addition to any other damages, liquidated or otherwise, for which provision is made herein or for which the Exchange shall be entitled, the sum of Twenty Dollars ($20.00) for each reel of film so withheld, plus a sum of money equal to the license fee provided herein for each day such film shall be withheld.

7. Unless the title of a subject is specifically mentioned, it is understood that the Exchange will loan to the Exhibitor a positive print of a subject of the Exchange's own selection.

8. Whenever dates for the exhibition of said pictures above mentioned or any of them are not set by the Exhibitor at the time the contract is signed by him, such dates must be fixed within thirty (30) days of release date of each of said pictures respectively, by a notice in writing delivered to the Exchange, provided that if any such pictures shall have been released prior to the signing of this contract by the Exhibitor, such dates must be fixed with in thirty (30) days of the date of signing. All pictures called for by this contract shall commence being played or exhibited, at the option of the Exchange, within sixty (60) days from the date of this contract or the release date of the picture. On failure thus to name such dates the Exchange reserves the right to fix such exhibition dates with

the understanding that the service shall be paid for on or before the date stipulated by the Exchange whether or not the Exhibitor shows the picture on the dates so set. The Exchange shall give the Exhibitor at least two weeks' notice of all exhibition dates thus fixed by it. The Exhibitor shall show or run each of the pictures above specified on the dates fixed as herein provided for the exhibition and at no other time. It is expressly provided, however, that should the dates specified by the Exhibitor for the exhibition of said pictures, or any of them, conflict with other runs contracted for respecting such pictures, then the Exhibitor shall, as above provided, specify other dates for the exhibition of said picture or pictures, such dates to be within thirty days after the date when the Exchange shall have such picture or pictures available for exhibition by the Exhibitor.

9. Prior to the shipment of any film specified in this contract, the Exhibitor shall pay to the Exchange all monies due on said film and on all other films theretofore supplied to the Exhibitor under this or any other contract between the parties hereto. In case such monies be not so paid, the Exchange in its discretion shall have the right to ship any film called for by this contract C. O. D. for the full amount due in accordance with this section, in which event the Exhibitor agrees to lift the same and pay all incidental charges.

10. The failure of the Exchange to insist upon strict performance of any provision hereunder shall not be construed as a waiver of such provision, nor of the right of Exchange to insist upon strict performance thereof and of all of the other terms and conditions of this contract, or damages for violation thereof or any other right or remedy which it may have.

11. The Exchange shall have the right to cancel and terminated this contract and all rights of the Exhibitor hereunder upon default of the Exhibitor in the payment of monies hereunder or otherwise by the Exhibitor to the Exchange or in case the Exhibitor fails to return as aforesaid any films loaned to or in the hands of the Exhibitor under this contract or any other agreement or contract. Such cancellation, however, shall not bar the right of the undersigned

to claim damages for any failure upon the part of the Exhibitor to comply with the terms of this contract.

12. The Exhibitor agrees further to pay to the Excange with respect to all film received hereunder any and all excise or other taxes now in existence and which may hereafter be imposed upon or collected and based or calculated upon the footage or rentals earned from the lease or license of said film by the Exchange to the Exhibitor or upon any contract or other dealing between the Exhibitor and the Exchange with respect thereto or the use thereof.

13. The Exhibitor hereby agrees to pay express and all carrying charges both ways on all service supplied.

14. If more than one picture is leased under the terms of this contract and the Exchange defaults in its performance of any clause of this contract as relating to any particular picture, then this contract shall not be considered breached or terminated, insofar as the other pictures covered by it are concerned, but such breach or default shall relate only and solely to the picture in relation to which such default occurs, and the Exhibitor shall not be entitled to cancel this contract with respect to such other picture or pictures or to refuse to comply strictly according to its terms with this contract insofar as concerns any such other picture or pictures.

15. It is understood between the parties hereto that no manager, agent, or representative of the Exchange has any authority to agree to any alteration or modification of this agreement except the Sales Manager in his office in New York. No verbal agreements will be recognized.

16. The Exchange shall be deemed to have made a delivery of reels or advertising matter ordered by the Exhibitor when said shipment or shipments are delivered, properly directed to a common carrier or authorized agent of the Exhibitor in time for said reels to reach (under ordinary circumstances) their destination on the day or days provided for their exhibition. In the event the Exchange shall become liable to the Exhibitor because of any nonperformance of this contract or of any of its terms and provisions, such liability shall not exceed the amount of film rentals for the picture or pictures in respect of which such

default shall occur for the period of such non-performance. The Exchange will not be liable for failure to make delivery of motion pictures contracted for by the terms of this contract by reason of any act or cause beyond its control, or by act of God.

17. This contract is not subject to cancellation by either party except in accordance with its terms and provisions.

[fol. 774] DEFENDANT'S EXHIBIT Q

1. The Exhibitor agrees to pay for such motion picture service, the sum of — Dollars upon the signing of this contract, and in addition thereto, the prices specified for each picture in the schedule below, at least seven days in advance of the starting date specified, until the total price has been paid in full. All payments shall be made at the office of the Exchange in the city of ——.

The Distributor reserves the right to demand and receive from the Exhibitor additional security to equal the value of Film, not to exceed $500.00, as protection for their property while in possession of the Exhibitor. In event of failure to furnish such security within seven days after demand, this contract shall, at the option of the Distributor, be deemed terminated and at an end without further liability on part of Distributor.

3. *Exhibitor must pay on account, on signing contract, an amount which must be at least equal to the rental of one picture on each series.

The sum paid upon the signing of this contract is not and shall not be considered as a deposit or advance as security for the performance of this contract by the Exhibitor but is and shall be considered a part payment on account of the rental price due and payable immediately upon the signing thereof, without any right, title or interest whatsoever in the Exhibitor. Should default be made by the Exhibitor in the prompt payment of any sum when due, then and in that event at the option of the Exchange, the entire amount of the rental shall be immediately due and payable without regard as to whether the entire service or

any part thereof has or has not been rendered by the Exchange.

4. Whenever dates for the exhibition of said pictures above mentioned or any of them are not set by the Exhibitor at the time the contract is signed by him, such dates must be fixed within thirty (30) days of release date of each of said pictures respectively, by a notice in writing delivered to the Exchange, provided that if any such pictures shall have been released prior to the signing of this contract by the Exhibitor, such dates must be fixed within thirty (30) days of the date of such signing. On failure thus to name such dates the Exchange reserves the right to fix such exhibition dates with the understanding that the service shall be paid for on or before the date stipulated by the Exchange whether or not the Exhibitor shows the picture on the dates so set. The Exchange shall give the Exhibitor at least two weeks' notice of all exhibition dates thus fixed by it. The Exhibitor shall show or run each of the pictures above specified on the dates fixed as herein provided for the exhibition and at no other time. It is expressly provided, however, that should the dates specified by the Exhibitor for the exhibition of said pictures or any of them conflict with other runs contracted for respecting such pictures, then the Exhibitor shall, as above provided, specify other dates for the exhibition of said picture or pictures, such dates to be within thirty (30) days after the date when the Exchange shall have such picture or pictures free for exhibition by the Exhibitor.

5. This contract shall remain in force until all releases succeeding the number of the first release specified in the schedule, have been played.

[fols. 775-796] Additional Terms and Conditions

1. The Exhibitor shall take good care of the films and if they are lost, destroyed or damaged (ordinary wear and tear excepted) shall pay the Exchange fifteen cents ($0.15) per linear foot of the film necessary to restore the production. The Exhibitor shall not permit any film or part thereof to be copied or duplicated and shall run the films as supplied, without alterations or trimming, with the film title preceding and the trailer, if any, following.

7. The Exhibitor shall not assign this contract nor transfer the service covered thereby, nor sell or rent any supplies mentioned herein, except with the written consent of the Exchange.

10. Prior to the shipment of any film specified in this contract, the Exhibitor shall pay to the Exchange all monies due on the respective subject and on all other subjects theretofore supplied to the Exhibitor under any other contract between the parties hereto. In case such monies be not so paid, the Exchange in its discretion shall have the right to ship any film called for by this contract C. O. D. for the full amount due in accordance with this section, in which event the Exhibitor agrees to lift the same and pay all incidental charges.

12. The Exchange shall have the right to cancel and terminate this contract in case the Exhibitor is in default in the payment of any monies due hereunder or under any other contract between the parties hereto; or in case the Exhibitor fails to return any film in his hands, under this or any other contract between the parties hereto, within the time appointed herein or therein for the return of same, or in case of any other default by the Exhibitor under this contract or such other contracts. This contract is not subject to cancellation by either party, except by the breach or non-fulfillment of clauses herein specified which are agreed upon as being grounds for the cancellation of same.

13. Inasmuch as the Exchange is dependent for its ability to perform this contract upon the production of the pictures covered by this agreement, which may be prevented by the illness, injury, incapacity, death or default of the artists, directors and other persons engaged in producing the same; and inasmuch as the performance of this agreement on the part of the Exchange may be prevented or delayed for reasons beyond its control, it is recognized by both parties that it is necessary for the Exchange to reserve the right of cancelling this agreement, either wholly or with respect to any one or more of said pictures covered hereby for one or more of said reasons. It is, therefore, expressly understood, provided and agreed that the Exchange may upon ten days' notice to the customer cancel this agreement, either wholly or with respect to any one or more of the pictures above specified; and that thereafter the Exchange shall be

under no obligation to the customer in respect of the picture or pictures thus cancelled.

[fols. 797-802] Defendant's exhibit "S" : see exhibit 1, 206.

Defendant's exhibit "T" : see exhibit 2, 207.

[fol. 803] DEFENDANT'S EXHIBIT U

U. S. DIST. COURT

Department of Justice, Office of the Assistant to the Attorney General, Washington

July 20, 1926.

Edwin P. Grosvenor, Esquire, 40 Wall Street, New York, N. Y.

DEAR MR. GROSVENOR: The material secured during the Department's extensive investigation of the film boards of trade and also the facts and arguments submitted by you and other counsel for the film boards have been very carefully considered, and the decision has been reached that no action will be instituted at the present time for the purpose of testing the legality of the system of arbitration and of enforcing awards outlined in Section 20 of the Standard Exhibition Contract and in the rules and regulations relating to arbitration, dated March 1, 1926.

The evidence considered, however, establishes that certain practices and agreements among the members of at least some of the local film boards of trade which supplement the procedure prescribed by the rules and regulations relating to arbitration, so far exceed the rules themselves as to make the members of those boards liable under the Sherman Antitrust Act, in accordance with the decision of the Supreme Court in Binderup v. Pathe Exchange, et al, 263 U. S. 291, and with the opinion as to the legality of the proposed rules and regulations which was given by your firm in a letter, dated April 10, 1923. It is, however, not the desire of the Department to institute any action or actions for the purpose of causing the discontinuance of such supplemental practices and agreements, if adequate relief can be secured through the voluntary action of the film boards of trade and through the establishment of a

more adequate check on the actions of the members of the local film boards.

The brief submitted to the Department by you and other counsel for the film boards of trade makes the statement that if demands for cash deposits have been sent to an ex- [fol. 804] hibitor by ten companies with which he has contracts, he may put up security under such contracts as he desires to retain and may let the other contracts go. The evidence considered establishes, however, that this statement is not in accordance with the general practice, and that as the result of agreements between the members of at least some of the local boards, an exhibitor who has failed to comply with an award or to put up all cash deposits demanded, not only cannot secure service under any existing contract with any distributor, but also cannot enter into any new contract with any distributor. The present rules and regulations relating to arbitration do not in fact require compliance with the opinion of your firm, dated April 19, 1923, as they do not contain any provision which requires a distributor to whom the demanded cash deposit has been paid to continue service under his contract. Paragraph 4 of Rule IV provides that the secretary of each film board of trade shall advise all members of his board of the name and address of every exhibitor theretofore in default who has complied with the award of the board of arbitration, and that thereupon each member having terminated any contract with such exhibitor or suspended service thereunder may reinstate such contract or resume service thereunder. When the resumption of service after full compliance with an award is made optional with each distributor by this rule, there would be very little reason for the members of the different film boards to feel obligated to continue service under every contract for the faithful performance of which the demanded cash security has been deposited.

The evidence considered also establishes that the cash deposits demanded of exhibitors who have failed either to submit to arbitration or to comply with the decision of a board of arbitration, are so invariably in the sums fixed by the boards of arbitration as the maximum, that the uniform practice must be necessarily the result of agreements or understandings among the members of the several film boards. This practice is inconsistent with the argument submitted in support of the alleged necessity and reason-

ableness of the cash deposits,—for if the value of the property which one distributor will entrust to the custody of an exhibitor is $100 and of that which another distributor will entrust to the same exhibitor is $400, it is neither necessary nor reasonable for both distributors to demand the same security.

The objectionable practices mentioned above could be corrected readily by changes in the rules and regulations relation to arbitration so that they would require any dis-[fol. 805] tributor whom the cash deposit is paid to resume service under his contracts, (a new paragraph in Rule IV); would require every distributor to resume service under his contracts upon the happening of the contingencies specified in paragraph 4 of Rule IV(a change in the phraseology of that paragraph), and would prohibit any distributor from demanding a cash deposit greater than the value of his property which would at any one time be entrusted to the custody of the exhibitor (a change in paragraph 3 of Rule IV).

I will be glad to have you advise me whether the practices and agreements among the members of the local film boards of trade in question will be effectually terminated by making the changes proposed above in the rules and regulations relating to arbitration or in some other way, in order to obviate the necessity of securing relief against those practices and agreements by the institution of actions which might have the undesired effect of impairing the usefulness of the entire arbitration system.

I must call your attention to the fact that the brief submitted by you and other counsel for the film boards of trade states that it is manifest that the investigation by this Department has resulted in a complete vindication of the motion picture industry and particularly of the Motion Picture Producers and Distributors of America, Inc., whereas in fact no investigation has recently been conducted by this Department of any branch of the motion picture industry except the organization and operation of the system for arbitration and for enforcing the awards of arbitration boards which is established under Section 20 of the Standard Exhibit Contract and the rules and regulations relating to arbitration.

Yours very truly, William J. Donovan, William J. Donovan, Assistant to the Attorney General.

[fol. 806] DEFENDANT'S EXHIBIT V

Edwin P. Grosvenor, 40 Wall Street, New York

July 30, 1926.

Honorable William J. Donovan, Assistant to the Attorney General, Washington, D. C.

DEAR COLONEL DONOVAN: I beg to acknowledge receipt of your letter of July 20, 1926.

Shortly after its receipt Mr. Hess, General Attorney of the Film Boards of Trade, and I had a conference with Hon. C. Stanley Thompson, Special Assistant to the Attorney General, in charge of the investigation, in order to discuss with him the changes in the Rules and Regulations of the Film Boards of Trade relating to Arbitration suggested in your letter. We have been happy to comply with your suggestions and in conference with Mr. Thompson have changed the Rules accordingly. I enclose a copy of the amended Rule IV which now contains all your suggestions.

I also enclose a copy of a letter which Mr. Hess proposes to send to all the Film Boards of Trade directing their attention to the criticism which you have made of certain of them for acting beyond the scope of the Rules, in which letter he cautions them in the future to strictly observe the Rules and Regulations.

I am happy to know that the examination made by your Department of the files and records of the New York office [fol. 807] of the Film Boards of Trade, under the supervision of which the Film Boards of Trade throughout the country operate, has established that the departure from the Rules by certain of the Film Boards of Trade has been contrary to the instructions received by such Boards of Trade from the New York office.

Very respectfully, Edwin P. Grosvenor.

EPG-cpr.
Encs.
Edwin P. Grosvenor, 40 Wall Street, New York.

[fol. 808] DEFENDANT'S EXHIBIT W

Department of Justice, Office of the Assistant to the Attorney General, Washington

July 31, 1926.

Edwin P. Grosvenor, Esquire, 40 Wall Street, New York, N. Y.

DEAR MR. GROSVENOR: I acknowledge receipt of your letter of July 30, 1926 and of the copy of amended Rule 4, Rules and Regulations Relating to Arbitration, and of the letter which will be sent to all the film boards of trade, which were enclosed therewith.

The changes made in the rules and regulations relating to arbitration fully meet the views stated in my letter of July 20, 1926, and I thank you for your prompt attention to the matter.

Yours very truly, William J. Donovan, William J. Donovan, Assistant to the Attorney General.

[fol. 809] July 30, 1926.

Rules and Regulations Relating to Arbitration, Amended to Meet Suggestions of Department of Justice

Rule IV.

Enforcement of Decisions of Board of Arbitration

1. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade located in each city out of which the exhibitor is served of (a) the name and address of each exhibitor who has been found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration; and (b) the maximum amount (not exceeding that specified in the Arbitration Clause) which each distributor may demand as security pursuant to such clause.

2. Upon receipt of such information, the Secretary of each such Film Board of Trade shall advise all members of such Film Board of Trade for their exclusive and confiden-

tial information (a) of the name and address of every exhibitor who shall have been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration, and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor.

3. Subject to the provision of Rule II, on receipt of any such notice, each member having a contract (or representing a distributor having a contract) containing the Arbitration Clause with any such exhibitor shall demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Said sum shall not exceed the actual value of any print to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such distributor shall proceed to suspend service under each such contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a period of ten days such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended service under any such contract with such exhibitor shall thereafter resume service under any such contract unless and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board. Upon the happening of either of such events service under such contract shall be promptly resumed by such member or distributor.

4. The Board of Arbitration shall from time to time notify the Secretaries of the Film Boards of Trade specified in paragraph 1 of this Rule IV in writing of the name and [fol. 810] address of each exhibitor previously found by the Board of Arbitration to have committed one or more of the

acts specified in paragraph 1 of this Rule IV, who shall thereafter have submitted to arbitration, or shall have complied with the decision of the Board of Arbitration. Upon receipt of any such information the Secretaries of the said Film Boards of Trade shall forthwith advise in writing all members of said Film Boards of Trade for their exclusive and confidential information of the name and address of every such exhibitor, and thereupon each member or distributor having suspended service under any such contract with such exhibitor (as provided in paragraph 3 of this Rule IV) shall resume service thereunder.

5. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association of the name of each member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall, from time to time, advise all members of the Film Board of Trade of the name of every member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Thereafter such member or distributor shall not be entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or distributor has submitted to arbitration or has complied with the decision or award of such Arbitration Board.

6. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association in writing of the name of each member or distributor represented by a member previously found to have committed one or more of the acts specified in paragraph 5 of this Rule IV, there-

after submitting to arbitration or having complied with the decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall advise in writing all members of the Film Board of Trade of the name of such member or distributor, and thereupon such member or distributor shall again be entitled to redress from such Board of Arbitration.

[fol. 811] To all Film Boards of Trade:

The Department of Justice at Washington has completed its investigation of the operations of the Film Boards of Trade throughout the country and has found that the New York office of the Film Boards of Trade has evidenced every desire to have the affairs of the Film Boards of Trade conducted in strict compliance with the law.

However, in the opinion of the Department of Justice such investigation discloses that certain practices and agreements (hereinafter pointed out) among the members of some of the Film Boards of Trade go beyond the Rules.

These practices must cease and any such agreements must be forthwith abrogated.

The practices and agreements criticized by the Department of Justice are those which may prevent an exhibitor who has failed to comply with an award or to put up all of the cash deposits demanded from not only securing service under existing contracts with distributors but also from entering into any new contracts.

Also that the cash deposits demanded of exhibitors who have failed either to submit to arbitration or to comply with a decision of a Board of Arbitration were generally the same and were the sums fixed by the Boards of Arbitration as the maximum.

So that there may be no doubt in the minds of the members of the Film Boards of Trade as to the proper practices contemplated under the Rules and Regulations and to carry out the suggestions of the Department of Justice, these Rules and Regulations will be amended so as

[fol. 812] (a) To obligate each distributor to fix the amount of security to be demanded from an exhibitor who has failed to comply with an award or has failed to submit

to arbitration at a sum not exceeding the actual value of any print to be delivered to the exhibitor under the contract plus the rental contracted to be paid therefor and in no case to exceed the maximum amount fixed by the Board of Arbitration;

(b) To obligate every distributor to whom a cash deposit is paid to promptly resume service under each contract for the performance of which the deposit has been made.

We are pleased to advise you that the Department of Justice in its investigation reached the conclusion that the Boards of Arbitration operate very fairly and equitably and that the establishment and operation of the arbitration system in the motion picture industry has had very great economic advantages both for exhibitors and for distributors and as practiced in accordance with the Rules and Regulations is of undoubted usefulness to the whole industry.

Very truly yours, C. C. Pettijohn, General Counsel, and Gabriel L. Hess, General Attorney.

[fol. 813] DEFENDANTS' EXHIBIT X

Circular to Film Bds.

Film Boards of Trade, 469 Fifth Avenue, New York

August 26, 1926.

To: Each film board of trade.
Subject: ——.

The Department of Justice at Washington has completed its investigation of the operations of the Film Boards of Trade throughout the country and has found that the New York office of the Film Boards of Trade has evidenced every desire to have the affairs of Film Boards of Trade conducted in strict compliance with the law.

However, in the opinion of the Department of Justice such investigation discloses that certain practices and agreements (hereinafter pointed out) among the members of some of the Film Boards of Trade go beyond the Rules.

These practices must cease and any such agreements must be forthwith abrogated.

The practices and agreements criticized by the Department of Justice are those which may prevent an exhibitor who has failed to comply with an award or to put up all of the cash deposits demanded from not only securing service under existing contracts with distributors but also from entering into any new contracts.

Also that the cash deposits demanded of exhibitors who have failed either to submit to arbitration or to comply with a decision of the Board of Arbitration were generally the same and were the sums fixed by the Boards of Arbitration as the maximum.

So that there may be no doubt in the minds of the members of the Film Boards of Trade as to the proper practices contemplated under the Rules and Regulations and to carry out the suggestions of the Department of Justice, these Rules and Regulations will be amended so as

(a) To obligate each distributor to fix the amount of security to be demanded from an exhibitor who has failed to comply with an award or has failed to submit to arbitration at a sum not exceeding the actual value of any print thereafter to be delivered to the exhibitor under the contract plus the rental contracted to be paid therefor and in no case to exceed the maximum amount fixed by the Board of Arbitration;

[fol. 814] (b) To obligate every distributor to whom a cash deposit is paid to promptly resume service under each contract for the performance of which the deposit has been made.

We are pleased to advise you that the Department of Justice in its investigation reached the conclusion that the Boards of Arbitration operate very fairly and equitably and that the establishment and operation of the arbitration system in the motion picture industry has had very great economic advantages both for exhibitors and for distributors and as practiced in accordance with the Rules and Regulations is of undoubted usefulness to the whole industry.

Very truly yours, C. C. Pettijohn, C. C. Pettijohn, General Counsel, and Gabriel L. Hess, Gabriel L. Hess, General Attorney.

[fol. 815] Film Boards of Trade, 469 Fifth Avenue, New York

August 26, 1926.

To: President each film board of trade.
Subject: ——.

With further reference to our letter of this date to all Film Boards of Trade enclosed is a copy of Rule IV of the Rules and Regulations relating to Arbitration as amended in accordance with the views of the Department of Justice.

Please call a special meeting of your Board and at such meeting present this amended Rule for adoption by the members.

It is recommended that the Resolution amending the Rules and Regulations be in the following form:

"Resolved that Rule IV of the Rules and Regulations relating to Arbitration bearing date March 1, 1926 and specified in the Standard Exhibition Contract be and the same hereby is amended to read as follows: (here insert the Rule as amended)"

A sufficient number of copies of the amended Rule is being sent under separate cover to the Secretary of your Board to deliver one to each of your members and one to the local Exhibitors Organization.

Please acknowledge the receipt of this letter and immediately the amended Rule has been adopted advise this office to such effect.

Very truly yours, C. C. Pettijohn, C. C. Pettijohn, General Counsel, and Gabriel L. Hess, Gabriel L. Hess, General Attorney.

[fol. 816] Rule IV, Amended to Conform to Suggestions of Dept. of Justice

Rule IV

Enforcement of Decisions of Board of Arbitration

1. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade located in each city out of which the exhibitor is served of (a) the name and address of each exhibitor who has been

found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration; and (b) the maximum amount (not exceeding that specified in the Arbitration Clause) which each distributor may demand as security pursuant to such clause.

2. Upon receipt of such information, the Secretary of each such Film Board of Trade shall advise all members of such film Board of Trade for their exclusive and confidential information (a) of the name and address of every exhibitor who shall have been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration, and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor.

3. Subject to the provision of Rule II, on receipt of any such notice, each member having a contract (or representing a distributor having a contract) containing the Arbitration Clause with any such exhibitor shall demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such distributor shall proceed to suspend service under each such contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a period of ten days such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended

service under any such contract with such exhibitor shall thereafter resume service under any such contract unless [fol. 817] and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board. Upon the happening of either of such events service under such contract shall be promptly resumed by such member or distributor.

4. The Board of Arbitration shall from time to time notify the Secretaries of the Film Boards of Trade specified in paragraph 1 of this Rule IV in writing of the name and address of each exhibitor previously found by the Board of Arbitration to have committed one or more of the acts specified in paragraph 1 of this Rule IV, who shall thereafter have submitted to arbitration, or shall have complied with the decision of the Board of Arbitration. Upon receipt of any such information the Secretaries of the said Film Board of Trade shall forthwith advise in writing all members of said Film Boards of Trade for their exclusive and confidential information of the name and address of every such exhibitor, and thereupon each member or distributor having suspended service under any such contract with such exhibitor (as provided in paragraph 3 of this Rule IV) shall resume service thereunder.

5. The Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association of the name of each member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall, from time to time, advise all members of the Film Board of Trade of the name of every member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the

Board of Arbitration. Thereafter such member or distributor shall not be entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or distributor has submitted to arbitration or has complied with the decision or award of such Arbitration Board.

6. The Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association in writing [fols. 818 & 819] of the name of each member or distributor represented by a member previously found to have committed one or more of the acts specified in paragraph 5 of this Rule IV, thereafter submitting to arbitration or having complied with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall advise in writing all members of the Film Board of Trade of the name of such member or distributor, and thereupon such member or distributor shall again be entitled to redress from such Board of Arbitrtaion.

[fols. 820-873] Defendant's Exhibit "Y"; see pp. 1 & 2 of Exhibit L-1, omitted, printed side page 874.

Defendant's Exhibit "Z" omitted; see p. 25, line 21, to p. 30, line 36 of Exhibit L1; printed side page 874.

[fol. 874] DEFTS. EX. L'

Federal Trade Commission

Trade Practice Conference for the Motion Picture Industry, Held at New York City, October 10 to 15, 1927

United States Government Printing Office, Washington, 1928

[fol. 875] Federal Trade Commission

William E. Humphrey, Chairman.
Abram F. Myers.
Edgar A. McCulloch.

Garland S. Ferguson, Jr.
C. W. Hunt.
Otis B. Johnson, Secretary.

[fol. 876] Trade Practice Conference—Motion-Picture Industry

Statement by the Commission

Federal Trade Commission,
Washington, D. C., May 25, 1928.

During the week of October 10, 1927, a trade practice conference was held for the motion-picture industry in the assembly room of the bar association of the city of New York. The conference was conducted by Abram F. Myers, commissioner of the Federal Trade Commission, assisted by M. Markham Flannery, director of trade practice conferences.

The industry, consisting of producers, distributors, and exhibitors, was represented in practically its entirety.

Of 37 resolutions offered and discussed, 26 were unanimously adopted. On 5 there was a strict division of the vote, the independent exhibitors voting in opposition to the producers and distributors. Four resolutions were withdrawn and two did not reach a vote before adjournment.

The resolutions as here presented have been renumbered and divided into four groups. The rules appearing in group I have been approved by the commission. The rules in Group II have been received and accepted by the commission as expressions of the trade. The resolution appearing in Group III is disapproved by the commission. The resolutions under Group IV are held in abeyance without further action of the commission, as the sharp division of the vote cast indicates a total lack of agreement as between the opposing branches of the industry.

Group I

Rule One

(Formerly Exhibitors' Resolution No. 6)

Whereas the motion-picture industry recognizes that commercial arbitration promotes good will, economy, and better

standards of business, and is endeavoring to develop in the most complete way possible a system of arbitration for the settlement of disputes between distributors and exhibitors which will be both fair to all and speedily expedient; and [fol. 877] Whereas it is the desire of all branches of the industry to use a uniform exhibition contract, both to standardize its contractual relations and to provide for such arbitration; and

Whereas it is the further desire of all branches of the industry that the standard exhibition contract so providing for such system of arbitration shall be fair as possible at this time and shall be changed or modified as from time to time experience may demonstrate that it should be changed, and the further desire that the present provisions of such contract *and all* future changes or modifications herein shall *themselves* be subject to arbitration, and the further desire that the rules and regulations for the arbitration of all disputes arising under such contract shall be as fair as possible at this time and shall be changed or modified from time to time by arbitration, as experience may demonstrate and warrant that they should be; and

Whereas it is believed that changes can be effected in such standard exhibition contract to improve the same: Now, therefore, be it

Resolved, (1) That to carry out the purposes of this resolution and the desire of all branches of the industry to promote fair arbitration and contractual relations, a committee of six shall be immediately designated, consisting of three members chosen by the unaffiliated exhibitor delegates here assembled and three members chosen by the producer-distributor delegates here assembled; that three affiliated exhibitor delegates without right to vote may participate in the work of this committee; that such committee shall immediately institute a study of the provisions of such standard exhibition contract and the rules for the arbitration provided for therein, and develop improvement in such contract and in such rules for arbitration, and develop a plan for the further operation of arbitration. In the event the exhibitor members and producer-distributor members of said committee are unable to agree, a seventh member of such committee shall be designated, such seventh member to be chosen unanimously by the six members, and if such

six members can not unanimously agree on such seventh member, then the Chief Justice of the Supreme Court of the United States shall be asked by such committee to appoint its seventh member.

(2) That after such adoption of such modified standard exhibition contract and such modified rules of arbitration, it shall be the further purpose of such committee to have periodical considerations of both said contract and rules of arbitration at consistent periods, under the plan therefor which said committee shall develop to consider whether changes in such standard exhibition contract and arbitration rules are warranted by experience, and at such periodical deliberations the seventh member may be called in for decisions.

(3) It is understood that such amended standard exhibition contract and amended rules of arbitration shall be ready for use for the season 1928–29: Be it further

Resolved, That the use of a standard uniform contract providing for arbitration both of disputes arising out of said contract and of the provisions of the contract itself, is a fair trade practice.

Received as a resolution of the conference with one opposing vote.

Personnel of Committee Selected to Carry Out the Requirements of Exhibitors' Resolution No. 6 (Rule One, Group I)

For the affiliated exhibitors.—E. A. Schiller, Harold Franklin, Fred Desberg. Alternates: E. V. Richards, Dan Michaelove, Harry M. Crandall.

For the unaffiliated exhibitors.—R. R. Beichele, Ben Bernstein, Nathan Yamins. Alternates: J. L. Rome, H. A. Cole, Joseph Walsh.

For Distributors and producers.—Felix Feist, J. R. Grainger, Phil Reisman.

[fol. 878] Rule Two

(Formerly exhibitors' Resolution No. 7)

Resolved, That the insertion of commercial advertising, for which compensation is received, in motion-picture pro-

productions leased to exhibitors as entertainment is unfair trade practice.

Rule Three

(Formerly exhibitors' Resolution No. 9)

Resolved, That the substitution by a producer or distributor for any photoplay contracted for by any exhibitor, as the photoplay of a specified star or of a specified director, or as based upon a specified story, book, or play, of any photoplay in which such specified star does not appear, or which has not been directed by such specified director, or which is not based upon such specified story, book, or play, as the case may be, unless with the consent of the exhibitor, is an unfair trade practice.

Example.—This resolution was adopted with the understanding that if the contract mentions neither star, cast, director, nor author in the description of the story, which in the work sheet is described as a play of college life, but when delivered proves to be a story dealing with the mining fields of Pennsylvania, would be a substitution within the meaning of the resolution.

Rule Four

(Formerly distributors' Resolution No. 1)

Resolved, That the requirement by any distributor that an exhibitor as a condition of being permitted to purchase any picture of such distributor shall also purchase pictures of another distributor, is an unfair trade practice.

Rule Five

(Formerly distributors' Resolution No. 4)

Whereas the use of misleading or salacious advertising is recognized as an evil, and

Whereas the distributors of motion pictures represented in the membership of the film boards of trade themselves will not use misleading or salacious advertising in connection with their product:

Resolved, That it is a fair trade practice to use their best efforts to discourage others in the industry from using misleading or salacious advertising.

Rule Six

(Formerly distributors' Resolution No. 8)

The purchasing of photoplays for a specific theater, which photoplays are also used in other theaters uncontracted for, commonly known as "bicycling" is an unfair trade practice.

Rule Seven

(Formerly distributors' Resolution No. 9)

Deliberately returning a print late, thus securing additional exhibition time without payment of the rental therefor, or by reason of such delay making it impossible to ship such print to the next exhibitor who has it booked, is an unfair trade practice.

[fol. 879] Rule Eight

(Formerly distributors' Resolution No. 10)

Resolved, That the giving of any gratuity, either by an exhibitor to a salesman or a salesman to an exhibitor, in exchange for advantages not otherwise procurable between buyer and seller, either in relation to the sale or booking of motion pictures, is an unfair trade practice.

Rule Nine

(Formerly distributors' Resolution No. 11)

Resolved, That the use of a signed application for a contract by an exhibitor, and the showing of the rental prices thereon, either by a distributor to another exhibitor for the purpose of securing higher rental prices, or by an exhibitor to a distributor other than to whom such application is addressed, for the purpose of securing a reduction of rental prices, is an unfair trade practice.

Rule Ten

(Formerly distributors' Resolution No. 13)

Resolved, That the practice of contracting for pictures for one theater and using service at an entirely different theater than the one specified in the contract is an unfair trade practice.

Rule Eleven

(Formerly distributors' Resolution No. 14)

Resolved, That failure on the part of the exhibitor to promptly report correctly the results of percentage bookings is an unfair trade practice.

Rule Twelve

(Formerly distributors' Resolution No. 16)

Resolved, That any agreement among competing exhibitors to allocate among themselves the motion pictures of distributors, thereby eliminating competition in the rental of such motion pictures, is an unfair trade practice.

Rule Thirteen

(Formerly distributors' Resolution No. 16-A)

Resolved, That any agreement among distributors to prevent any exhibitor from contracting for the motion pictures of such distributors, or to exact from such exhibitor a higher rental for the motion pictures of such distributors than could otherwise be obtained in open competition, is an unfair trade practice.

Rule Fourteen

(Formerly distributors' Resolution No. 18)

Resolved, That the use of buying power for the purchase of more photoplays than an exhibitor can consume, in order to deprive a competing exhibitor of the opportunity of purchasing his supply of photoplays, whether it be an attempt to corner the market against such competing exhibitor, or whether it be with the thought of forcing a competing exhibitor out of business, or the compelling of such competing exhibitor to sell his theater, is an unfair trade practice

[fol. 880] Rule Seventeen

(Formerly Distributors' Resolution No. 5)

Whereas it is a trade practice to enforce in 482 film exchanges in the United States rules and regulations for the prevention of fire more drastic than those provided by the

State and city fire commissioners, and fire drills are conducted each week, a safety committee comprising three branch exchange managers and secretary of the local film board of trade conducts a rigid monthly inspection enforcing regulations regarding general housekeeping conditions to prevent fire, including regulations against smoking, protecting film or waste matter from contact with radiators, steam pipes, and electric lights, testing sprinkler systems and fire extinguishers, eliminating the use of any inflammable material in the shipping and inspection departments and preventing accumulation of scrap film, and every other possible regulation to protect the lives of employees and to insure safety; and

Whereas the reports of the safety committee are checked in the home office of the film board of trade; and any vio- [fols. 881-885] lation of any rule or regulation is immediately corrected; and as a result of this work fires in film exchanges have been practically eliminated; and since January 1, 1927, there has been no fire loss in any department in the distribution of film:

Resolved, That such regulation of film exchanges is a fair trade practice.

Rule Eighteen

(Formerly Distributors' Resolution No. 6)

Whereas, throughout the United States to-day more than 1,500 public, private, and charitable sectarian and nonsectarian institutions for caring for "shut-ins" are showing motion pictures; and such motion-picture programs are furnished to these various institutions by national and regional distributors through the various film boards of trade under a plan whereby the responsibility for such distribution is divided among all members of each board; and in most instances such motion-picture programs are furnished free of charge to such institutions as orphan asylums, homes for the aged, tuberculosis hospitals, and institutions housing war veterans; and

Whereas in some cases they are furnished upon payment of the postal or express charges to ship and return the films, and in other instances where institutions have appropriations available with which to purchase entertainment for the inmates, nominal charges are made; and

Whereas in all instances motion-picture films are furnished to such institutions with the understanding that they are to be shown only to the inmates and attendants of their respective institutions and that the general public is not to be admitted either free of charge or for an admission charge: Now therefore be it

Resolved, That the admission of the public, either free of charge or for an admission charge, to any such motion-picture entertainment or performance is on unfair trade practice and unfair competition to theater owners; and

Resolved, That the showing of motion pictures in such institutions where the public is not admitted, either free of charge, or for an admission charge, is a fair trade practice.

Rule Nineteen

(Formerly Distributors' Resolution No. 7)

That the practice of transferring title to a theater without making an honest and sincere effort for the transferring at the same time of existing contracts is an unfair trade practice.

[fol. 886] Agreed Statement of Policy Proposed by Producer-Distributor Groups and Accepted by Exhibitors

(Held in abeyance until results can be determined from its actual effect upon the motion-picture industry)

3. If an exhibitor shall claim within a reasonable time prior to the date fixed for the exhibition of any picture included in any block leased by him that such picture will be offensive to the clientele of his theatre because of racial or religious subject matter, such claim shall be arbitrated by the board of arbitration of the proper zone, and, if sustained, such exhibitor shall be relieved of obligation to take and pay for such picture.

4. If any exhibitor who has purchased an entire block of pictures offered by any distributor so elects within a reasonable time prior to the date fixed for exhibition of any picture included in such block, such exhibitor may refuse to take such picture by paying one-half of the allocated price thereof, provided that the pictures so rejected out of any block shall not exceed 10 per cent of the number in-

cluded in such block, and if a rejected picture is resold by the distributor, one-half of the net price received on such resale shall be credited against the exhibitor's obligation in respect of such picture up to the amount of such obligation.

5. Reissues will not be included in any block with new pictures.

6. News reels and short subjects will not be included in any block with features, and the lease of news reels or short subject blocks shall not be required as a condition of being permitted to lease feature blocks or vice versa.

7. The matters dealt with by paragraphs 3 and 4 shall be covered by appropriate provisions to be included in the new standard form of contract.

[fol. 887] Group IV

The vote of the industry on resolutions appearing in this group clearly indicates that the industry was hopelessly divided and that conference had not resulted in an agreement to change their respective attitudes toward the subjects covered. On all other resolutions there was unanimous agreement.

Exhibitor's Resolution No. 8

This is a companion resolution to exhibitor's Resolution No. 3-b.

Resolved, That the refusal of a distributor to lease a photoplay or photoplays to an exhibitor for exhibition within a reasonable time after its prior run, shall be considered an unfair trade practice.

(Vote sharply divided—distributors and affiliated group opposed and unaffiliated exhibitors in favor of the measure.)

By reason of the extent and importance of the industry, the report of the presiding commissioner and the report of the director of trade practice conferences containing an analysis of the proceedings, a brief description of the plan used in selecting delegates, the organization of the con-

ference, and the viewpoints as expressed at the conference by different interests follow.

By the commission:

Otis B. Johnson, Secretary.

[fol. 888] Memorandum to the Commission

By Abram F. Myers, Commissioner

February 28, 1928.

As reported orally at the table, submission of a report covering this conference held in New York last October has been delayed from time to time pending correction of the record, consideration of protests, and outcome of the recent meeting to negotiate a new standard contract.

I earnestly hoped the conference would result in an agreement which would meet the commission's views with regard to block booking. A pledge was made by the distributors (it can not be regarded as a formal resolution of the conference), which modifies the practice in certain particulars, but this can not be accepted as a compliance with the order in the Famous Players-Lasky case.

The position of the commission in that case, as I understand it, is that block booking is in and of itself unlawful. That being true, no resolution which recognizes the legality and propriety of the practice, and contemplates its continued observance by the distributors, can be accepted as a compliance with the order as dispensing with the necessity for proceedings against the other distributors employing the practice.

In general, I approve the report by Mr. Flannery but do not think the commission should further postpone action to enforce the order in the Famous Players-Lasky case. Also, I think the commission should at once proceed against the other great distributors, since it is hardly fair to pursue only the Famous Players-Lasky Co. when its competitors are doing the same thing.

Attached hereto is a petition by the several distributors to postpone further proceedings in the matter of block booking until a thorough test has been made under the modifications undertaken by the distributors at the conference. This petition is entitled to consideration, although,

as I have said, I personally do not favor further delay in the matter.

I agree with Mr. Flannery regarding exhibitors' Resolution No. 1, which disposes of the protests received from Mr. L. H. Wentz, of Ponca City, Okla.

[fol. 889] In conclusion I recommend:

(1) That the report by Mr. Flannery covering the conference be adopted.

(2) That the Famous Players-Lasky Co. be notified that its report of compliance is disapproved.

(3) That the other distributors practicing block booking be cited before the board of review to show cause, if any they have, why complaints should not issue against them.

Respectfully, Abram F. Myers, Commissioner in Charge.

[fol. 890] Report of Director of Trade Practice Conferences. Trade Practice Conference Motion-Picture Industry (Held in the assembly room of the Bar Association of the City of New York, October 10 to 15, 1927)

Summary

The three branches of the motion picture industry unanimously adopted 26 rules of business conduct governing the production, distribution, and exhibition of motion pictures. Agreement between these three branches was reached on all matters of importance except three, and it appears that one or more of these might have been disposed of if delegates representing independent exhibitors could have continued in conference a day or two longer. Many of these delegates were compelled to return to their respective places of business at the end of one week, and although the conference by the end of the second day was efficiently organized into groups, subdivided into committees, and coordinated through joint-group committees, the various subjects proposed for discussion as expressed in 37 different resolutions could hardly be expected to be weighed, analyzed, digested, and agreed upon within four or five days' time. This notwithstanding that the committee work was carried on until late at night. But there is evidence of a new and better spirit within the industry. The full degree of accomplishment can not be gauged by the bare

recorded action. This, it would seem, can be truly appraised by what is done in actual practice during the next 6 or 12 months, and in no other way.

The task undertaken by the commission in this conference was colossal. The net results accomplished may not be all that might have been hoped for by the commission, but they exceeded greatly the expectations of exhibitors, distributors, and producers, as judged by their generally expressed preconference predictions and by their later comments as to what the conference accomplished, as reflected verbally, in correspondence, and by the press.

This task is by no means complete. It has but begun. The members of the different branches of the industry have barely become acquainted. Heretofore they have dealt at arm's length, largely through agents. Never before had the four branches of the motion-picture industry met and mutually discussed their problems. To discuss them fully, frankly, and fearlessly, under the auspices of [fol. 891] an impartial, official, disinterested body, was indeed novel, and for this the independent exhibitors were not fully prepared. They lacked previous organization and sufficient time within which to formulate resolutions in language which could always be accepted by the producer-distributor-affiliated group.

This result of unavoidable inadequacy of time is clearly illustrated in the transcript of the closing session, wherein it is shown that the producer-distributor group reiterated its previously expressed agreement with the principle of prohibiting producers and distributors from acquiring theaters for the purpose of coercing exhibitors to buy films or to dispose of their theater holdings, but objected to the wording of the resolution (exhibitor's substitute Resolution No. 5) intended to condemn this practice.

That neither side was fully prepared for final action on this important matter, which deals with the practice prohibited by the third paragraph of the order in the Famous Players-Lasky case, is shown by the fact that the amendment to this resolution, upon which a vote had been called for, was not available. (Tr. p. 393.) The presiding commissioner, in view of the closing hours of the conference, invited the producer-distributor group to "indicate to the

commission in the proper way, later on, how they felt about the substance of the substitute, or the original, or the amendment." (Tr. p. 395.) The amendment does not appear to be of record, and this may account for the fact that no such statement has been received by this division. It may be, however, that the matter in question is covered in a broad general sense by the first paragraph of the "Statement of policy," which specifically states that "the sales method known as block booking shall not be used for the accomplishment of any illegal purpose," as the carrying out of the practice in question would seem to be an illegal use of block booking.

The opportunity for further future accomplishment by the trade practice conference procedure, in adjusting between these groups the few remaining matters upon which they as groups failed to agree, is strongly indicated by the fact, among others, that the heretofore inadequately organized unaffiliated or independent exhibitors now regard themselves as having been organized by the Federal Trade Commission, and, as expressed after the conference by the secretary selected by the unaffiliated group, they expect to continue this organization which was "in a way created of, for, and by the Government." The secretary further stated:

> We now have a rather unique set-up in our exhibitor organization. The conference created a national body of unaffiliated exhibitors. The Motion Picture Theater Owners of America, in their recent convention at Columbus, Ohio, changed their membership to include the affiliated, or "circuits" as they were then called. We, therefore, now have [fol. 892] two national organizations with different functions, namely the Motion Picture Theater Owners of America functions on questions affecting all theaters, such as local legislation, fire prevention, and other obvious things; the unaffiliated exhibitors' organization functions on all questions of unfair trade practices between themselves and other branches of the industry.
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> * * * * * * *

Mr. Peter Woodhull is national chairman of both organizations. This is quite all right and it will be Mr. Woodhull's duty to "hew to the line."

The unaffiliated exhibitors, to maintain their rights, hopes, and purposes, must always insist that no one who is affiliated shall have voice, vote, or proxy in any action of the unaffiliated exhibtors of the United States.

As further illustrating what might be accomplished by a trial period during which actual practices in the industry can be observed, Mr. Brylawski, of Washington, D. C., who operates both as an independent and as an affiliated exhibitor, states that since the conference he has purchased for his independent houses as low as 50 per cent of a block of pictures offered by concerns which have upheld the sales system of block booking.

In other words, if the methods complained of are adjusted in actual practice, or partially so, a second conference at an appropriate time would no doubt be of the greatest benefit.

Among the chief results of the conference, with reference to the matters which most vitally concern independent exhibitors, are:

(A) A modification in five important particulars of the sales plan known as block booking. These modifications consist—

(1) In the abandonment, by producers and distributors of the compulsory double and triple block booking, of the most vicious feature of this system—namely, compelling exhibitors to buy not only the block of one producer, but the blocks of two or three producers.

(2) In entirely divorcing "news reels" and "short subjects" from all blocks of feature pictures.

(3) In relieving exhibitors from paying for pictures which, by reason of religious or racial features, are objectionable to their audiences, although such pictures have been contracted for and delivered.

(4) In allowing exhibitors to reject 10 per cent of the number of pictures which have been purchased in any block.

(5) In eliminating the practice which formerly included reissues with new pictures.

These modifications seem to eliminate the compulsory features of block booking, except that the exhibitor may be compelled to take 90 per cent or none of the block offered. [fol. 893] In view of the statement of record, however, made on behalf of the producer-distributor groups but not included in the agreed statement of policy, nor in any resolution, namely:

The distributors will not object to pricing pictures individually, or negotiating with exhibitors of their own free will on the basis of less than a block of pictures, but we want to be the final judges as to whether or not we shall accept such propositions.

If this is reasonably and equitably carried out in practice, block booking will have lost its horrors. The actual practices of the industry will be watched by this division during the next 12 months.

(B) The provision for machinery whereby the present uniform standard contract is to be revised or rewritten, and which should assure to the independent exhibitor fair and equitable dealing.

Other matters of importance to the independent exhibitors upon which agreement by the groups failed are:

1. An equal opportunity to bid for all pictures.

2. Relief from what is known as "protection," which consists in requiring an unreasonable length of time to elapse after the first showing or subsequent showings are permitted.

3. Relief from producers acquiring, or threatening to acquire, theaters, in order to coerce exhibitors to lease pictures or to surrender theater holdings.

(The producer-distributor group agreed to the principle but objected to the wording of the resolution concerning this practice 3.)

Matters of particular interest to distributors upon which all branches of the industry agreed, were: Condemnation by resolution of coercive block booking; fake motion-picture schemes, and other dishonest enterprises which traffic upon certain portions of the public interested in the motion-

picture industry; the use of misleading and salacious advertising; violation of fire regulations; the transferring of titles to theaters without proper provision relating to existing contracts; the bicycling of films; delaying shipment of films; commercial bribery; the use of films at a theater other than the theaters specified in the contract; failure to report promptly percentage bookings; agreements among distributors to exact higher rental values than can be obtained in open competition, and the use of buying power by the exhibitor to buy more films than can be used, for the purpose of obtaining a corner, or to force a competing exhibitor out of business, or to force him to sell his theater.

In addition to the statement of policy previously referred to, as offered by the producer-distributing groups and accepted by the independent exhibitors, and which provides for certain modifications of block booking, the producer group presented seven resolutions which were unanimously adopted by the conference.

[fol. 894] These resolutions are restatements of rules previously worked out and adopted by the Motion Picture Producers and Distributors of America (Inc.). They were designed to maintain the highest moral standard in the production of pictures. They provided formulae for the selection and rejection of story material, for the prevention of deceptive titles and salacious advertising, for prevention of duplication and confusion with reference to titles, and to guard against the inducement of breach of contract. They also protect employees known as "extras" from unscrupulous employment agencies, provide better conditions generally under which they work, and prohibit improper exploitation of children employed in the motion-picture industry.

Agreement among the groups on some of the many subjects covered seems remarkable when it is considered that many of the unaffiliated delegates were entirely unknown to one another, no confidential relations existed between them, and they appeared to be doubtful and distrustful of one another as well as of the other groups. Some of the problems arising within this comparatively new industry were exceedingly complex, and branches of a single industry could hardly be conceived as farther apart in their objects and opinions than were the unaffiliated exhibitors

and the other groups. This was freely remarked prior to and at the commencement of the conference, but a feeling of growing confidence became aparent early in the proceedings which increased and strengthened as the conference progressed, and a disposition became manifest by all the various groups to try to see the other side and agree on matters in dispute.

Recommendation

It is hereby respectfully recommended:

(a) That all resolutions unanimously adopted by the conference, except exhibitors' Resolution No. 1, be accepted and approved by the commission.

(b) That exhibitors' Resolution No. 1 be rejected in its present form as illegal.

(c) That exhibitors' Resolutions Nos. 2 and 5, 3-A, 3-B, and 8, upon which no agreement between groups was reached, be held in abeyance until the full effect of the trade-practice conference on the actual conduct of the industry can be determined.

(d) That action on the statement of policy offered by the producer-distributor group and accepted by the independent-exhibitor group be held in abeyance until results can be determined from its actual effect upon the motion-picture industry.

(e) That a trial period of 6 or 12 months after action by the commission be allowed within which to observe the [fol. 895] workings of the results of the conference, at the end of which time a report be made by the division of trade-practice conferences on the working of the rules, accompanied by a recommendation with reference to the advisability of calling a second conference, or with reference to such other action as conditions at that time seem to warrant the consideration of the commission.

Introductory

After welcoming the delegates to "the most representative gathering of the moving-picture industry ever assembled," Commissioner Myers stated that in a measure the

meeting was an outgrowth of the proceeding against the Famous Players-Lasky Corporation, but that in a broader sense it was a gathering of the industry for the purpose of self-regulation. "Self-regulation" the commissioner defined as a voluntary conformity to standards of fair dealings and the law, and it was explained that the policy of the commission is to encourage self-regulation of industry through trade-practice conferences wherever possible. The resulting benefits of trade-practice conferences to the public and to industry were attested by the mention of a number of successful conferences previously held and a recital of the results obtained from the trade-practice conference for correspondence schools.

The delegates were informed that the great growth of the moving-picture industry and its bearing on economic, family, and social life had made the necessity for its proper conduct a matter of the gravest public concern; that adequate and fair representation for the numerous independent exhibitors had been secured through an approved plan and confidence was expressed in the ability of the delegates to avoid selfish insistence on measures to which they were not fairly entitled and to be governed in their deliberations by a desire for fair play.

The order issued in the Famous Players-Lasky Corporation was reviewed, and it was stated that one of the main objects of the conference was to enable the industry to adopt, if possible, some arrangement regarding the marketing of films which will be in keeping with the spirit of this order, and thus make further litigation on the subject unnecessary.

While giving full recognition to the practical difficulties involved in the abandonment or modification of the block-booking system, Commissioner Myers expressed full confidence in the willingness of the conference to work out a plan which would be fair to producers and exhibitors alike.

The commissioner made it plain that the purpose of the conference was not to obtain evidence upon which to base [fol. 896] prosecutions of complaints, but to provide a forum for the full discussion of practices of the industry which may fairly be comprehended within the expression "method of competition," as used in section 5 of the Federal Trade Commission act, and to afford the industry an

opportunity to work out a plan of self-regulation to be finally expressed in resolution form and presented to the full commission for consideration.

The difference between resolutions which are and those which are not approved by the commission was explained to the conferees.

In referring to the expansion by the commission of the constructive work of trade practice conferences, Commissioner Myers stated that it may well be that this procedure will play an important part in enabling American industry to withstand the increasing pressure of foreign competition.

Hon. Will H. Hays, president of the Motion Picture Producers and Distributors of America (Inc.), followed Commissioner Myers with an address in which he informed the conference that the Motion Picture Producers and Distributors of America has no authority over the business policies of its members and has no authority over such trade practices as "block-booking" and "protection" although the members "separately and individually are deeply interested in these things"; that the association was organized to establish a body of business ethics and a body of trade practices to the end that its own growth might be orderly and disciplined; he expressed the belief that there are trade practices, both noncompetitive and competitive, within the industry which could be improved and suggested that the occasion challenged the best thought and the most unselfish consideration of all present to the problems at hand. In what ways, Mr. Hays asked, if any, are any prevailing trade practices of the industry out of line with its own best interest and the public interest? How and why are the different branches and factors of the industry working against each other? What will we do together properly and finally to alleviate the difficulties and establish ways of free opportunity, of sure justice and of larger service? Mr. Hays asked that the conferees find answers to the questions and that all of the time and labor expended at the conference would then be justified. He urged that the producers and distributors welcome the conference provided by the Federal Trade Commission to disclose the whole workings of the industry to strictest public scrutiny; that the meeting of responsible business men and women gathered there for a responsible purpose would develop

a succession of formulæ which would bring better service to the public; that every branch of the industry wants every other branch to prosper and the whole structure rests upon the favor of the public; that if the public is pleased the entire industry thrives and grows; that more [fol. 897] than 1,000,000 people in New York and immediate vicinity every day get their relaxation and principal amusement from pictures, with 12,000,000 every day in this country alone giving a vote of confidence of the very first quality which measures exactly our duty; that, indeed, it is a vote of confidence which can not be ignored either by friends or by critics of pictures; that the public through its loyalty to its most important amusement stands ready to defend it if need be from the small minority, but that the same public, because of that same loyalty, stands ready to destroy this industry if at any time it proves false to its public trust.

Mr. Cohen delivered the keynote address for independent theater owners. The burden of this related to two subjects, namely, block booking, and the results of producers competing in the exhibition field with their own customers, namely, independent theater owners, to whom the producers supply their product. Mr. Cohen represents the extreme of independent exhibitor views. He advocates, for example, that all producers be compelled to dispose of their theaters.

Block booking, according to Mr. Cohen, "is a moot question," susceptible of several interpretations. He seemed to find it beneficial in one form, but roundly denounced it in others. Thus he stated.

The voluntary buying of a series of pictures from one manufacturer by a theater owner, to assure himself of a sufficient amount of product to keep his theater running, is entirely different from forced, coercive, or compulsory buying of the entire product of the company in order to obtain a few desired pictures, or through fear of reprisals.

Of triple compulsory block booking, the form of block booking which compels a theater owner to purchase the product of three companies, and which is alleged to be of recent origin, Mr. Cohen said:

Take for instance, a small town of perhaps 2,000 inhabitants, whose theater owner and whose picture-goers have

the selection of the entire film market open to them. Think of their being compelled to purchase the product of three companies—Famous Players-Lasky, Metro-Goldwyn-Mayer, and United Artists, working together through relationship and intermarriage—the entire product of these three companies being purchased under compulsory and coercive methods, for unless you take all three you do not get any, and this completely fills the theater's playing time. Thus the people of any such town or community are denied the opportunity of seeing the worthwhile pictures of other producing organizations. * * * If any one of these three companies have their own theater in the section they withhold even offering their combined product to any theater owner in the section; otherwise they will attempt to force the theater-owner to play all of the pictures of the three companies above mentioned.

With reference to the second subject, considered by Mr. Cohen to be the most vital problem confronting the industry, he stated that 90 per cent of the "neighborhood houses" (theaters other than those located in business or [fol. 898] theater sections of cities) are independently owned; that most of these are unfairly treated by producers, in that they are denied a fair division of product; that producers build, own, and operate theaters, which fact places producers in competition in the exhibition field with their own customers, the independently owned theaters; that these producer-owned or affiliated theaters receive preferential treatment in the matter of securing film privileges; that the number of these producer-owned theaters is increasing; and that the most representative "neighborhood houses" are made to suffer a severe handicap by reason of such preferential treatment, utterly unreasonable "protection" accorded inferior houses in the same locality but belonging to the producers; and that if this continues it will force other producers to enter the exhibition field and to almost completely annihilate the business of independent theaters; that this condition jeopardizes investment in independently owned houses and will result in control of the industry by a few producers and in higher prices to the public.

The remedy suggested by Mr. Cohen was to compel the producers to dispose of their theaters.

Origin, Organization, and Conduct of the Conference

This conference, suggested in the brief of Attorney Martin A. Morrison in support of the complaint in the Famous Players-Lasky Corporation, Docket 835, was initiated by the commission July 8, 1927. The investigation by the division of trade practice conferences was begun July 12, completed August 11, 1927, and reported to the commission on the latter date. On September 13 the conference was authorized to be held within the 30 days following.

Practically 100 per cent of those engaged in the production, distribution, and exhibition of motion pictures were represented at this conference, which convened October 10, 1927, in the assembly room of the Bar Association of the City of New York, and which adjourned October 15, 1927.

The commission was represented by Commissioner Abram F. Myers, assisted by M. Markham Flannery, director of trade practice conferences, and Messrs. S. D. Mayers and Charles M. Brown. Stenographic assistance in addition to the official reporter was furnished by the commission's New York branch office.

The arrangements for the conference were complete. The entire second floor of the Bar Association's building was given over during the week for conference purposes. A room was assigned for the use of the commissioner and three other rooms were used as committee rooms for the several branches of the industry; a fourth room was provided for representatives of the press, of which there were [fol. 899] about 15 members present during each day of the conference. These appropriately appointed quarters were quite in keeping with the dignity and importance of the occasion and formed a striking contrast to the inappropriate quarters frequently furnished for governmental functions.

The producers, distributors, and affiliated exhibitors were highly organized, and satisfactory representation thereof was readily and easily obtained. The independent or unaffiliated exhibitors, some 20,000 in number, were not organized so as to conveniently afford adequate and fair representation. For this purpose, however, the plan submitted to and approved by the commission was put into effect, to the ultimate satisfaction of all concerned. A full

description of this plan, together with a description of the organizations, divisions, and subdivisions of the industry, was submitted to the commission in a report by this division under date of August 11, 1927.

Briefly, this plan provided that two delegates be selected from each of the 32 geographical zones into which the moving-picture industry in the United States had been divided for commercial purposes; such delegates representing each zone, respectively, were selected by the three exhibitor members of the arbitration board, working in conjunction with the local exhibitors' organization, if any. Neither delegate was to have any affiliation whatever with producers or distributors. One such delegate represented chains of theaters consisting of groups of five or more, and the other was selected among owners of but one theater or less than five.

The producers were represented by 43 delegates; the distributors were represented by 25 delegates in person, and all other independent or original distributor members of the 32 film boards of trade were represented by proxy and power of attorney by C. C. Pettijohn; the affiliated exhibitors were represented by 59 delegates and the unaffiliated exhibitors were represented by 66 delegates, 2 each from the 32 zones and 2 in addition from New Jersey, whose exhibitors felt that they were denied representation and applied to the commission for permission to send delegates, which request was granted by the commission and the appointments confirmed by the delegates from the 32 zones.

The size and character of the conference required that the assembly room be divided into six areas, each of which was taped off and placarded; four were reserved for the respective delegations; one for the 21 different associations and societies, civil, religious, educational, advertising, and others, which were represented, and the remaining space was used for the public generally. At each day's session of the general conference all seats, about 250 in number, were taken, and frequently many were compelled to stand.

[fol. 930] Due to the fact that the discussions of some practices were of interest to particular groups only, that others affected two or more of the groups, while still others affected the entire industry, Commissioner Myers organized the conference into separate branches, permitting each

branch to elect its own chairman and secretary. The meeting of the whole conference was then adjourned to convene at a designated hour for the purpose of allowing the several groups to retire to their respective rooms for the discussion of various problems from their own viewpoint, each to agree among themselves upon the action to be taken as a group.

At the hour set for the reconvening of the entire conference the chairman of each group reported such progress as had been made and offered any resolutions which had been agreed upon in the group meeting. This, however, did not bar any member of the conference from freely expressing his views. The resolutions as presented by the respective chairmen were debated and, in the absence of objection, were received as resolutions of the conference. If objected to by any member either of the group reporting or of other groups, a vote was taken, or the matter was referred to a joint committee, or referred back to the group meeting for further consideration.

The organizations of the various groups were as follows:

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E45-100

Defendants' Exhibit Z, Mar. 15, 1929

Producers' group.—Louis B. Mayer, chairman; Richard A. Rowland, vice chairman.

Distributors' group.—R. H. Cochrane, chairman; Sidney R. Kent, vice chairman.

Affiliated theaters.—Fred Desberg, chairman; Harry M. Crandall, vice chairman; Leopold Friedman, secretary.

Conference committee.—Sidney R. Kent, James R. Grainger, J. Robert Rubin, S. F. Hartman, Fred Desberg, Edward Schiller, Harold B. Franklin.

Contract committee.—Distributors: Felix Feist, James R. Grainger, Phil Reisman. Affiliated exhibitors: Fred Desberg, Harold B. Franklin, Edward Schiller.

Unaffiliated Exhibitors' National Committee

Established New York City, October 10, 1927, consisting of 66 delegates selected from 33 distributing centers of the United States.

Chairman.—Peter Woodhull, New Jersey.

Secretary.—Frank J. Rembusch, Indiana.

Credential committee.—Jules Michael, Buffalo, chairman; Joseph Walsh, Connecticut; Ben Bernstein, Los Angeles.

Rule adopted: Delegates eligible to voice or vote must answer "Yes" to question 1, and "No" to questions 2 and 3.

Question 1. Do you own any theaters?

Question 2. Has any distributor or producer any affiliation in your theater or own any stock in same?

Question 3. Did you own any stock in any film-producing or distributing company?

[fol. 901] Resolution committee.—Harry Suchman, New York, chairman; Charles Picquet, North Carolina; Sid Samuelson, New Jersey; Sam H. Boriskey, Chattanooga; James C. Ritter, Detroit; A. C. Gutenberg, Milwaukee; Henry Lustig, Cleveland.

Rule adopted: All motions must be presented by resolutions—first presented to resolution committee for passage, after which they are presented to full committee for final action.

Advisory committee.—James Ritter, Michigan, chairman; Joseph Seider, New Jersey; J. J. Harwood, Cleveland; J. Arthur Hirsch, New York.

Rule adopted: Advisory committee to advise and guide acts of national chairman; to call meetings of the special committees or to call conventions of the entire delegate committee when necessary; to function as the executive head of the unaffiliated organization.

Block booking committee.—Charles O'Reilly, New York, chairman; R. R. Biechele, Kansas City, Kans.; Nathan Yamins, Fall River, Mass.; N. B. Bernstein, Los Angeles; Jack Miller, Chicago.

Rule adopted: To confer with producers for a solution of block booking.

Contract committee.—R. R. Biechele, Kansas City, chairman; Ben Bernstein, Los Angeles; Nathan Yamins, Fall River, Mass.

Alternates.—J. L. Rome, Baltimore, Md.; H. A. Cole, Marshall, Tex.; Joseph Walsh, Hartford, Conn.

Secretary to committee.—H. M. Richey, Michigan.

Rule adopted: To meet with contract committee of producers as soon as possible and create a new and more equitable standard exhibition contract.

Rule adopted: All committees are in position to function at any time. The entire committee may be called together at any time for another convention by the advisory committee or by a call of the Federal Trade Commission.

The producers, distributors, exhibitors, and representatives of the public group affiliations represented at the conference were, according to roll call, as follows:

Producers

Asher, Small & Rogers (Inc.), F. W. Beetson, proxy.

Bray Productions (Inc.), proxy absent.

Chadwick Productions, Harry Thomas.

Christie Film Co. (Inc.), F. W. Beetson, proxy.

Cecil B. de Mille Pictures Corporation, John C. Flinn.

Distinctive Pictures Corporation, absent.

Eastman Kodak Co., Eugene Crystal.

Educational Film Exchanges (Inc.), E. W. Hammons.

Fairbanks Productions, Dennis O'Brien.

F. B. O. Pictures Corporation, J. P. Kennedy and Joseph Schnitzer.

First National Pictures (Inc.), R. A. Rowland, Samuel Spring, C. B. Hawley, E. P. Depinet.

Fox Film Corporation, J. R. Grainger, Percy Heilinger.

Samuel Goldwyn (Inc.), F. W. Beetson, proxy.

D. W. Griffith (Inc.), D. W. Griffith, Arthur Kelley.

Inspiration Pictures (Inc.), F. W. Beetson, proxy.

Kane Productions (Inc.), F. W. Beetson, proxy.

Buster Keaton Productions, Joseph M. Schenck, Dennis O'Brien.

Kinogram Publishing Corp., Capt. G. L. McBain.

Harold Lloyd Corporation, F. W. Beetson, proxy.

[fol. 902] Metro-Goldwyn-Mayer Distributing Corporation, J. R. Rubin, Nicholas M. Schenck, Felix Feist, Louis B. Mayer.

Metropolitan Dist. Corporation, F. W. Beetson, proxy.

Paramount Famous-Lasky Corporation, S. R. Kent, E. J. Ludwig, Ralph A. Kohn.

Principal Pictures Corporation, Irving Lesser.

Producers Distributing Corporation, Philip Reisman, John C. Flinn.

Pathé Exchange (Inc.), Elmer Pearson, Louis Innerarity.

Hal Roach Studios, F. W. Beetson, proxy.

Sam E. Rork (Inc.), F. W. Beetson, proxy.

Joseph M. Schenck Productions (Inc.), Joseph M. Schenck, Arthur Kelley, Dennis O'Brien.

Mack Sennett (Inc.), F. W. Beetson, proxy.

Gloria Swanson Productions, H. A. Moore.

Talmadge Producing Corporation, Joseph M. Schenck, Dennis O'Brien.

United Artists Corporation, Al Lichtman, Joseph M. Schenck, Dennis O'Brien.

Universal Pictures Corporation, R. H. Cochrane, L. B. Metzger, S. F. Hartman.

Vitagraph (Inc.), Sam Morris and H. L. Beresford.

Warner Bros. Pictures (Inc.), Sam Morris and H. L. Beresford.

Jack White Comedy Corporation, F. W. Beetson, proxy.

Chas. Chaplin Corporation, Arthur Kelley.

List of Distributors

Capitol Exchange, Herman Gluckman.

Commonwealth Film Corporation, Samuel Zierler.

Educational Film Exchanges, E. W. Hammons and C. E. Catlin.

F. B. O. Pictures Corporation, J. P. Kennedy and Joseph Schnitzer.

Box Film Corporation, J. R. Grainger and Percy Heilinger.

First Division Pictures Exchange, Harry Thomas.

First National Pictures Corporation, E. P. Depinet and Samuel Spring.

Aywon Pictures, Melvin Hirsh.

Lumas Pictures Corporation, B. A. Rogers.

Montague & McConville, absent.

Metro-Goldwyn-Mayer Distributing Corporation, Felix Feist and J. R. Rubin.

Pathe Exchange (Inc.), Elmer Pearson and Louis Innerarity.

Producers Distributing Corporation, Phil. Reisman and John C. Flinn.

Merit Film Corporation, Harry Thomas.

Hollywood Pictures (Inc.), Jack Bellman.

Gotham Productions (Inc.), B. A. Rogers.

Masterpiece Productions, Ben Amsterdam.

Columbia Pictures Corporation, Jack Cohn and S. K. Brandon.

Tiffany Productions, M. H. Hoffman and Ed. Smith.

Paramount Famous-Lasky Corporation, S. R. Kent and E. J. Ludvigh.

Universal Film Exchange, L. B. Metzger and S. T. Hartman.

Warner Bros. Pictures (Inc.), Sam Morris and H. L. Beresford.

United Artists Corporation, Al. Lichtman and Dennis O'Brien.

Vitagraph (Inc.), Sam Morris and H. L. Beresford.

De Luxe Film Exchange, Oscar Neufeld.

All other independent or regional distributors, members of the 32 film boards of trade, represented by proxy and power of attorney, by C. C. Pettijohn.

[fol. 903] Affiliated Exhibitors

J. H. MacFarland, Griffith Amusement Corporation.

F. L. Senff, Rickerts & Nace Amusement Enterprises (Inc.).

Wesley E. Synder, Naborhood Theaters Corporation.

Dan Michaeloff, Universal Chain Theaters Corporation.

Meyer Schine, Schine Theaters.

Max Balaban, Balaban & Katz.

Ed. Sonnensheim, Lubliner & Trintz.

A. C. Keough, Shea Operating Corporation, Paramount Enterprises (Inc.), Maine & New Hampshire Theaters (Inc.).

F. L. Metzler, A. H. Blank Theaters Corporation, Consolidated Amusements (Inc.), Savannah Theaters Corporation.

Spiros Skouros, Skouros Super-Theaters Corporation.

Floyd Brockell, Great States Theaters.

Marion Coles, E. J. Sparks Enterprises (Inc.), W. S. Butterfield Theaters (Inc.), Butterfield & Butterfield Theaters Co.

Paul Raibourn, Publix Theaters.

L. M. Ash, Jefferson Amusement Co., Dent Theaters (Inc.).

Maurice Goodman and Martin King, B. F. Keith Corporation, Orpheum Circuit.

Wm. S. Hart, F. F. Proctor Circuit.

D. A. Harris, Harris Amusement Co.

Leopold Friedman and Edward A. Schiller, Loew's (Inc.).

Fred Desberg, Loew's Ohio Theaters.

H. B. Franklin, West Coast Theaters.

Elihu Root, jr., West Coast Theaters of Northern California.

Frank Wilson and George Murphy, Pacific Northwest Theaters.

—— Hindler, Franc Amusement Co.

John Dillon, Hollywood Theaters (Inc.).

A. G. Thurman, West Coast California Theaters.

H. M. Crandall and Louis Sablosky, Stanley Co.

George A. Pettinger, Syracuse Strand Theater.

M. A. Silver, Strand Theater Co. of New England.

J. M. Levenson, Stanley-Mark-Strand.

Sidney Jacobs, Stanley-Eflinger Co.

Jacob Fox, Stanley-Fox Theater Co.

Nathan Stiefel, Stanley-Stiefel Co.

J. K. Kirner and Mr. Myers, Stanley Shapiro Theater Co.

Earl Forte, Nixon-Nirdlinger Co.

Samuel Blaskey, Cosmos Theater Co.

Jack Frere, West Chester Amusement Co.

Alexis Carlin, Atlantic City Vaudeville Co.

J. H. McCarron, Garden Pier Theater Co.

Chas. Thomson, Sylvania Amusement Co.

Alex Myers, Agonz Theater Co.

Joseph Stein, Stanley Fabian Corporation.

Samuel Rosen, Montclair Amusement Co.

W. C. Delaney for Henry Hecht, Lincoln Amusement Co., Bergen County Amusement Co.

S. Perlman for A. Dowllinger, Ritz Theater, Newark.
S. Braskin, Continental Amusement Co.
H. W. Dewsnap, Consolidated Amusement Co.
Louis Sablosky, Crandall-Stanley Theaters.
[fol. 904] Marcus A. Benn, Marcus A. Benn.
Morris Spiers, Morris Spiers.
Joseph Jordan, Joseph Snellenberg.
Sidney Jacobs, David Bortin.
H. D. Buckley, United Artists Theater Circuit.
Charles Levine, Roxy Theaters Corporation.
Percy Heilinger, Fox Theaters Corporation.

Unaffiliated Exhibitors (from the 32 Zones)

Albany, L. A. Buettner, Cohoes, N. Y.; Meyer Schine, Gloversville, N. Y.

Atlanta, S. H. Borisky, Chattanooga, Tenn.

Boston, Stanley Sumner, Cambridge, Mass.; Nathan Yamins, Fall River, Mass.

Buffalo, Jules Michaels and A. C. Hayman (Sidney Pfeifer, attorney, Buffalo, by proxy representing all).

Butte, Mont., absent.

Charlotte, N. C., Chas. W. Picquet, Pinehurst, N. C.

Chicago, Ludwig Siegel, Chicago; Jack Miller, Chicago.

Cincinnati, A. Hettesheimer, Cincinnati.

Cleveland, J. J. Harwood, Cleveland; H. H. Lustig, Cleveland.

Dallas, H. A. Cole, Dallas; Sam Hefley, Cameron, Tex.

Denver, E. A. Bishop, Denver; Max Shubach, Denver.

Des Moines, E. P. Smith, Fort Dodge, Iowa; Harry M. Weinberg, Des Moines.

Detroit, James C. Ritter, Detroit; Glenn A. Cross, Battle Creek, Mich.

Indianapolis, Billy Conners, Marion, Ind.; Frank J. Rembusch, Indianapolis.

Kansas City, Mo., R. R. Biechele, Kansas City, Kans.; A. F. Baker, Kansas City, Kans.

Los Angeles, N. B. Bernstein, president M. P. T. O., Los Angeles.

Memphis-Little Rock, Cecil W. Cupp, Arkadelphia, Ark.

Milwaukee, A. C. Gutenberg, S. Bauer, Milwaukee.

Minneapolis, absent.

New Haven, J. W. Walsh, Hartford, Conn.; Joseph L. Shulman, Hartford, Conn.

New Orleans, D. L. Suddath, Natchitoches, La.; C. J. Goodwin, Bastrop, La.

New Jersey, Sidney Samuelson, Newton, N. J.; Joe Seider, Heightstown, N. J.

New York, J. Arthur Hirsch, New York City; Harry Suchman, New York City.

Oklahoma City, E. W. Johnson, Tulsa; F. B. Pickrel, Ponca City, Okla.

Omaha, C. E. Williams, Omaha; H. F. Kennedy, Broken Bow, Nebr.

Philadelphia, E. J. Goldman, Philadelphia; Lewen Pizor, Philadelphia.

Pittsburgh, Nathan Friedberg, Pittsburgh; Anthony P. Jim, Pittsburgh.

Portland, Oreg., G. T. Woodlaw, Portland.

St. Louis, Oscar C. Lehr, St. Louis; Fred Wehrenberg, St. Louis.

Salt Lake City, proxy held by R. F. Woodhull.

San Francisco, Morris Gallos, San Francisco; Charles Michaels, San Francisco.

Seattle, Ray A. Grombacher, Spokane, Wash.; J. M. Hone, Seattle.

Washington, D. C., Herman Blum, Baltimore; J. Louis Rome, Baltimore.

Public Group Affiliations—Civic, Educational, Religious, etc., Made After October 10

Rev. Harry S. Myers, secretary moving pictures, Northern Baptists' Convention, Board of Missionary Cooperation, 276 Fifth Avenue, New York City.

[fol. 905] Mrs. Eva J. Boh, International Federation of Catholic Alumnae (care of Mrs. McGoldrick).

Mr. Lee F. Hamner, director of recreation, Russell Sage Foundation, 130 East Twenty-second Street, New York City.

Mrs. Harry Lilly, director of public relations, Outdoor Advertising Industry Association, 101 West Ninety-third Street, New York City.

Mrs. Lillian Sire, president National Women's Democratic Club (Inc.), Hotel White, New York City.

Miss Edna Wakefield, New York, County Chapter American Red Cross, New York County Chapter.

Mrs. Joseph Kendrick Butler, state chairman better films, Daughters of American Revolution, 28 Lefferts Place, Brooklyn, N. Y.

Mrs. F. H. Handsfield, Rockville Center Women's Club, Long Island Federation of Women's Clubs, Rockville Center, L. I.

Mrs. Charles T. Owens, Civic Club of Norristown, Norristown, Pa.

Mrs. J. A. Selden, chairman, selected performances, Macon Better Films Committee, Macon, Ga.

Mrs. Belle Harlam, League for Protection of Riverside Drive, and the Theatre Club (Inc.).

Dr. Christian F. Reisner, pastor Chelsea M. E. Church, president Broadway Tabernacle Corporation.

Dr. A. Rose, Universal Church, Newark, N. J.

Rev. George Reid Andrews, director, Church and Drama Association, Federal Council of Churches, 105 East Twenty-second Street, New York, N. Y.

Rev. Leland P. Cary, pastor Jackson Heights Community Church.

Rev. James Yard, representative of West China University in United States, M. E. Missionary Board.

M. E. Head, director United States Veterans' Bureau, second coordination area.

Dr. Robert Hill, Council for the Adult Education of the Foreign Born.

Mr. John R. Norton, research director, National Educational Association, Washington, D. C.

Mrs. H. S. Brancher, secretary, Playground and Recreation Association of America.

Miss Marella Freeman, Cleveland, Ohio, representing American Library Association.

At the request of Commissioner Myers, certain statistical data was furnished by members of the conference, and this appears in the transcript of record, beginning at page 402, and consists of a statement of the number of pictures (1) produced, and (2) distributed (released) by educational organizations for seasons 1926-27 and 1927-28, and certain statistics relating to releases of motion picture distributing companies for 1925-26, beginning at page 403.

Exhibitors' Resolutions

Among the matters complained of by exhibitors was a species of intermediate or sporadic competition from two sources. The first consists in the occasional exhibition given by churches, schools, and like institutions, at which the public is admitted and an admission fee charged, but [fols. 906 & 907] for which no tax is paid. The other is competition from producers who, under certain circumstances and from time to time, exhibit their productions for purely coercive purposes.

[fol. 908] Exhibitors' Resolutions Nos. 3, 3-a, 3-b, and 8—Abuse of buying power—First-run privileges.—Resolutions 3-a and 3-b were passed as substitutes for resolution 3 as originally offered. There was sharp division on the final vote.

The purpose of these resolutions was to correct the alleged abuse of buying power as reflected in the undue advantages accorded affiliated exhibitors by making it impossible for independent exhibitors to secure productions on an equal rent basis. This, regardless of the independent exhibitors' willingness and ability to pay a fair and reasonable price for first runs of such productions. Inability to compete for first-run pictures is alleged to be eliminating the independent theater, with a resultant marked tendency toward monopoly.

This is regarded by the exhibitor body as the major issue of the conference and was covered in exhibitors' Resolution No. 3 as originally presented. This was unanimously rejected by the producer-distributor group, and substitutes designated No. 3-a and No. 3-b were offered. A vote taken on roll call on Resolution No. 3-a resulted in sharp division, the independent exhibitors voting for the resolution and the producer-distributor group and affiliated exhibitors voting solidly against it.

A vote on Resolution No. 3-b produced the same result, and Resolution No. 3-b was later considered in connection with exhibitors' Resolution No. 8, the vote on which likewise resulted in the same sharp division.

No agreement having been reached between independent exhibitors and the remaining branches of the industry, this question stands where it was before the holding of the conference.

The discussion on these resolutions developed the fact that the greatest value of a picture accrues in its earliest exhibitions, called "first-runs"; that first-run privileges are exceedingly important, if not absolutely essential, to the first-class motion-picture theaters; that these privileges are accorded to affiliated exhibitors (theaters operated by [fol. 909] producers or distributors) and denied absolutely to independent exhibitors operating theaters in the localities of affiliated theaters. It was further alleged that first-run privileges formerly enjoyed by some independent exhibitors were taken away upon the establishment of affiliated theaters in the same locality. A further abuse of this power is alleged to enable affiliated exhibitors to buy the poorest of a group of independent theaters, and, by reason of their ability to secure the best pictures, to compel the remaining independents to sell or close their theaters. The independents, it is said, have the choice of closing their theaters or becoming affiliated.

The arguments against these resolutions were confined to the economies and benefits incident to quantity buying and selling and the legality thereof. The affiliated group, speaking through Mr. Kent, claimed that the resolution destroyed the right of the distributor to sell to whom he pleased in the most economical way. He claimed that under present conditions six or seven men are not required in one zone, which would be the case if exhibitors were refused the opportunity for collective buying. He believed, he said, that they have the right to select their customers or to "pick the chains" (namely, to sell to theaters grouped under a single management). He believed that they should not be compelled to make three or four hundred sales in order to dispose of a million dollars of product if the same thing could be accomplished by a few sales. He believed that the resolution, if passed, would increase selling costs "because we would have to get together all the theaters and seek bids, and in that way necessarily increase the cost." (Tr. p. 247.)

Commissioner Myers then inquired whether it was not Mr. Kent's practice, in advance of showing his product, to book that product. Mr. Kent replied: "You still have your personal negotiations. Your book does not carry places. For instance, six men want a particular picture

and they enter into negotiations for it, naturally you would make your contract for the highest price." (Tr. p. 247.) "We have productions we don't care to sell on the basis of highest price and we don't want them to buy. We have accounts that have been with us ever since we have been in business and we have not sold any house against them, but we don't make them buy from us." (Tr. p. 248.)

Commissioner Myers could not get very clear answers from the affiliated groups to questions intended to ascertain whether any distinction in practice is made between selling films to affiliated theaters and to independent theaters. The record, however, seems to show that such a distinction is made in practice. In fact, the "independents of the Buffalo zone" formed an organization within the [fol. 910] past few weeks for the purpose of buying films collectively. The sale of motion pictures was absolutely and uniformly refused by the distributing organization, because they were a combination of independently owned houses and not a combination of affiliated houses. (Tr. p. 206.)

The independent exhibitors in the Cleveland zone had a somewhat similar experience and several individuals stated that they were deprived of the opportunity to bid on the best pictures, although they had suitable houses within which to exhibit them.

Perhaps an agreement can later be worked out on this question, but, as previously stated, the status of the matter after the conference is the same as it was before the conference was held.

Resolutions 3-A and 3-B are as follows:

No. 3-A

Resolved, That the allocation, leasing, and licensing of films by a distributor to any group of exhibitors without affording all competing exhibitors an equal opportunity to bid for such films shall be deemed unfair practice, provided this shall not apply to wholly owned producer theaters. (Tr. p. 262.)

No. 3-B

Resolved, That the granting of protection with the leasing or licensing of a film, over a theater which is not in

competition with the theater so licensed, is an unfair trade practice.

Exhibitors' Resolution No. 4. This resolution failed to reach a vote before the conference adjourned because of the fact that the producer group claimed to be too busy with other resolutions to give it sufficient consideration. The purpose of the resolution as originally presented was to eliminate the last vestige of block booking in any form.

The distributors' position and the lengths to which they were willing to go in this matter were stated by Mr. Kent in the following language:

We believe that there is a public interest: not to the extent that some would indicate, because we believe the public has a misconception of what block booking is. If a picture does not happen to be popular, that should not be blamed on block booking, because you get poor ones in any method. As far as the public is concerned we are willing to do this: If a picture, because of race, morality, or any other reason where a general public resentment exists—not with the idea of getting out from under a contract—the matter should go before a neutral board of arbitration, and if it is ruled the exhibitor shall not be forced to run the picture, he will be relieved of his contract. That is something we are willing to do. As far as changing the present method of wholesale selling is concerned, these distributors will not object to pricing pictures individually or negotiating with exhibitors of their own free will on the basis of less than a block of pictures. We want to be the final judges—and the loss of business would be our penalty—as to whether or not we shall accept the proposition. Further than that I can not go, because of the limi- [fol. 911] tations that have been imposed upon the profits here. We are willing to meet in conference to talk over any plan that anyone else has to suggest that may be practicable. We have not been able to find it. We believe we are within our legal right to sell as we are now selling. We have not been able to find a substitute.

It was stated by an independent exhibitor that all distributors do not agree with the thought that block booking is the only method of selling.

It was contended on behalf of the independent exhibitors that block booking is largely responsible for bringing films

into disrepute with persons of taste; that one poor or unwholesome film shown in a theater for three days will be felt for three weeks afterwards in diminished attendance.

Compulsion was stated to consist in requiring exhibitors to take all films offered, or none; that the contract compels exhibitors to take the whole program; that exhibitors pay more for part time than for the whole program. An instance was cited in which one manager ran a line in his newspaper to the effect that he did not recommend his entertainment for that week to his regular patrons. A continuation of this altruistic method is preventable by provision of the uniform contract relating to general advertising. (Tr. p. 305.) It was also complained that the—taking of any especially good picture out of a block and showing it at increased rental for road showing, under the contract clause permitting producers to make substitution in certain exigencies * * *. (Tr. pp. 305-6.)

Compelled the public to pay just as much for poor film entertainment as for good.

The resolution, as amended and presented, reads as follows:

Resolved, That coercive block book (ing) is an unfair trade practice; and it is further

Resolved, That all distributors be compelled to furnish the exhibitors with the quotation on each and every picture offered for sale, with the exhibitor having the privilege of selecting any of these pictures at an agreed price. However, if the exhibitor feels that more than one, most, or all of any group of pictures are of such a quality as to be desired by the public patronizing his theater, then and in that case the distributor should be permitted to sell to said exhibitor more than one, most, or all of said group of pictures: provided further, however, That no inducement greater than a 10 per cent discount be allowed for such quantity sale.

The subject matter of this resolution is treated in the statement of policy offered by the producer-distributor-affiliated groups and accepted by the independent exhibitor group. Revision of the standard uniform contract is provided for in exhibitors' Resolution No. 6.

[fol. 912] Exhibitors' Resolution No. 6.—From the standpoint of the independent exhibitor this is probably one of the most important resolutions passed by the conference. It provides a means whereby justice and equity should supplant the alleged unfairness to which independent exhibitors claim they have been subjected in the matter of being compelled to enter into contracts containing clauses of which they disapprove but were left no choice other than to forego the purchase of films or sign on the dotted line. The resolution provides for the rewriting of the standard uniform contract and for such modification and changes in the system of arbitration as a committee of six shall deem necessary. This committee consists of six members, three of whom are to be designated by the independent delegates and three to be designated by the producer-distributor members present at the conference. If the six members can not unanimously agree on a seventh member in the event of dispute they are to request the Chief Justice of the Supreme Court of the United States to name such seventh member. The resolution as finally passed reads as follows:

Whereas the motion-picture industry recognizes that commercial arbitration promotes good will, economy, and better standards of business, and is endeavoring to develop in the most complete way possible a system of arbitration for the settlement of disputes between distributors and exhibitors which will be both fair to all and speedily expedient; and

Whereas it is the desire of all branches of the industry to use a uniform exhibition contract, both to standardize its contractual relations and to provide for such arbitration; and

Whereas it is the further desire of all branches of the industry that the standard exhibition contract so providing for such system of arbitration shall be fair as possible at this time and shall be changed or modified as from time to time experience may demonstrate that it should be changed, and the further desire that the present provisions of such contract and all future changes or modifi- [fol. 913] cations herein shall themselves be subject to arbitration, and the further desire that the rules and regu-

lations for the arbitration of all disputes arising under such contract shall be as fair as possible at this time and shall be changed or modified from time to time by arbitration, as experience may demonstrate and warrant that they should be; and

Whereas it is believed that changes can be effected in such standard exhibition contract to improve the same: Now, therefore, be it

Resolved, (1) That to carry out the purposes of this resolution and the desire of all branches of the industry to promote fair arbitration and contractual relations, a committee of six shall be immediately designated, consisting of three members chosen by the exhibitor delegates here assembled and three members chosen by the producer-distributor delegates here assembled; that such committee shall immediately institute a study of the provisions of such standard exhibition contract and the rules for the arbitration provided for therein, and develop improvement in such contract and in such rules for arbitration, and develop a plan for the further operation of arbitration. In the event the exhibitor members and producer-distributor members of said committee are unable to agree, a seventh member of such committee shall be designated, such seventh member to be chosen unanimously by the six members, and if such six members can not unanimously agree on such seventh member, then the Chief Justice of the Supreme Court of the United States shall be asked by such committee to appoint its seventh member.

(2) That after such adoption of such modified standard exhibition contract and such modified rules of arbitration, it shall be the further purpose of such committee to have periodical considerations of both said contract and rules of arbitration at consistent periods, under the plan therefor which said committee shall develop to consider whether changes in such standard exhibition contract and arbitration rules are warranted by experience, and at such periodical deliberations the seventh member may be called in for decisions.

(3) It is understood that such amended standard exhibition contract and amended rules of arbitration shall be ready for use for the season 1928-29: Be it further

Resolved, That the use of a standard uniform contract providing for arbitration both of disputes arising out of said contract and of the provisions of the contract itself is a fair trade practice.

(Substitute Exhibitor Res. No. 6 amended to show that the three voting delegates shall be unaffiliated, but that two affiliated delegates may participate without the right to vote.

Amended to three affiliated delegates without right to vote.) (Tr. 334.)

Received as a resolution of the conference with one opposing vote. (Tr. p. 334.)

Personnel of Committee Selected to Carry Out the Requirements of Exhibitors' Resolution No. 6

For the affiliated exhibitors.—E. A. Schiller, Harold Franklin, Fred Desberg. Alternates: M. V. Richards, Dan Michaelove, Harry M. Crandall.

For the unaffiliated exhibitors.—R. R. Beichele, Ben Bernstein, Nathan Yamins. Alternates: J. L. Rome, H. A. Cole, Joseph Walsh.

[fol. 914] For distributors and producers.—Felix Feist, J. R. Grainger, Phil Reisman.

Exhibitors' Resolution No. 7.—The following resolution was adopted without discussion:

Resolved, That the insertion of commercial advertising for which compensation is received, in motion-picture productions leased to exhibitors as entertainment, is unfair trade practice.

Introduced, page 371; adopted, page 371.

Exhibitors' Resolution No. 8.—This is a companion resolution to exhibitors' Resolution No. 3-B and is commented on under that heading. It reads as follows:

Resolved, That the refusal of a distributor to lease a photoplay or photoplays to an exhibitor for exhibition within a reasonable time after its prior run, shall be considered an unfair trade practice.

Vote sharply divided—distributors and affiliated group opposed, and unaffiliated exhibitors in favor of the measure. (Tr. 368.)

Exhibitors' Resolution No. 9.—This resolution is intended to secure to the exhibitor the pictures which he contracts to buy, and stars, directors, or stories upon which the picture is based can not later be substituted without the consent of the purchasing exhibitor. The resolution as amended reads as follows:

Resolved, That the substitution by a producer or distributor for any photoplay contracted for by any exhibitor, as the photoplay of a specified star or of a specified director, or as based on a specified story, book, or play of any photoplay in which such specified star does not appear, or which has not been directed by such specified director, or which is not based upon such specified story, book, or play, as the case may be, unless with the consent of the exhibitor, is an unfair trade practice. (Tr. 389.)

Interpretation.—This resolution was adopted with the understanding that if the contract mentions neither star, cast, director, nor author in the description of the story which in the work sheets is described as a play of college life but when delivered it proves to be a story dealing with the mining fields of Pennsylvania, would be a substitute within the meaning of the resolution.

Distributors' Resolutions

The distributors' resolutions appearing below condemn coercive block booking; fake motion-picture production schemes; fake motion-picture acting schools; fake motion-picture scenario schools, or other dishonest enterprises which trade on the public's ambition to become a part of the motion-picture industry; the use of misleading or salacious advertising; violation of film-exchange fire regulations; the practice of transferring titles to theaters without making at the same time provisions for transferring existing contracts; the "bicycling of films" or the surreptitious use of film in theaters other than those contracted for; delaying the return of films for the purpose of securing additional exhibition time without compensation, [fol. 915] or by reason of such delay making impossible the shipment of such film to the next customer who has booked it; commercial bribery; the use of film at a theater other

than the theaters specified in the contract; failure to report promptly percentage bookings; agreement among distributors to boycott the exhibitor or to exact higher rental value than can be obtained in open competition; and the use of buying power by an exhibitor to buy more films than he can use, for the purpose of attempting a corner or to force a competing exhibitor out of business, or to force him to sell his theater

Distributors' Resolution No. 1

Resolved, That the requirement by any distributor that an exhibitor, as a condition of being permitted to purchase any picture of such distributor shall also purchase pictures of another distributor, is an unfair trade practice.

Received without objection. (Tr. 116.)

Distributors' Resolution No. 2

This resolution did not reach voting stage.

Distributors' Resolution No. 3

Whereas the Motion Picture Producers and Distributors of America (Inc.) has allied itself with the International Advertising Association, the National Association of Credit Men, the American Bankers' Association, and the National Better Business Bureau, to prevent fraudulent activities: Now, therefore, be it

Resolved, That the proper educational work of the Motion Picture Producers and Distributors of America (Inc.), in cooperation with such other organizations, with respect to any attempted fraudulent enterprises relating to motion pictures, to the end that the public may not be defrauded by fake motion-picture production schemes, fake motion-picture acting schools, fake motion-picture scenario schools, or other dishonest enterprises which trade on the public's ambition to become a part of the motion-picture industry, is a fair trade practice.

Accepted as a resolution of the conference. (Tr. 120.)

Distributors' Resolution No. 4

Whereas the use of misleading or salacious advertising is recognized as an evil; and

Whereas the distributors of motion pictures represented in the membership of the film boards of trade themselves will not use misleading or salacious advertising in conection with the-r product:

Resolved, That it is a fair trade practice to use their best efforts to discourage others in the industry from using misleading or salacious advertising.

Received as a resolution of the conference. (Tr. 121.)

Distributors' Resolution No. 5

Whereas it is a trade practice to enforce in 482 film exchanges in the United States rules and regulations for the prevention of fire more drastic than those provided by the State and city fire commissioners; and fire drills are conducted each week, a safety committee comprising three branch exchange managers and secretary of the local film board of trade conducts a rigid monthly inspection, enforcing regulations regarding general housekeeping conditions [fol. 916] to prevent fire, including regulations against smoking, protecting film or waste matter from contact with radiators, steam pipes, and electric lights; testing sprinkler systems and fire extinguishers, eliminating the use of any inflammable material in the shipping and inspection departments and preventing accumulation of scrap film, and every other possible regulation to protect the lives of employees and to insure safety; and

Whereas the reports of the safety committee are checked in the home office of the film board of trade; and any violation of any rule or regulation is immediately corrected; and as a result of this work fires in film exchanges have been practically eliminated; and since January 1, 1927, there has been no fire loss in any department in the distribution of film:

Resolved, That such regulation of film exchanges is a fair trade practice.

Adopted. (Tr. p. 123.)

[fol. 917] Distributors' Resolution No. 9

Deliberately returning a print late, thus securing additional exhibition time without payment of the rental therefor, or by reason of such delay making it impossible

to ship such print to the next exhibitor who has it booked, is an unfair trade practice.

Received as a resolution of the conference. (Tr. 148.)

Distributors' Resolution No. 11, as Amended

Resolved, That the use of a signed application for a contract by an exhibitor, and the showing of the rental prices thereon, either by a distributor to another exhibitor for the purpose of securing higher rental prices, or by an exhibitor to a distributor other than to whom such application is addressed, for the purpose of securing a reduction of rental prices, is an unfair trade practice.

Received without objection. (Tr. 340.)

Distributors' Resolution No. 12

Withdrawn.

Distributors' Resolution No. 13

Resolved, That the practice of contracting for pictures for one theater and using service at an entirely different theater than the one specified in the contract is an unfair trade practice.

Received without objection. (Tr. 152.)

Distributors' Resolution No. 14

Resolved, That failure on the part of the exhibitor to promptly report correctly the results of percentage bookings is an unfair trade practice.

Received by conference without objection. (Tr. 153.)

Distributors' Resolution No. 15, as Amended

Withdrawn. (Tr. 363.)

[fol. 918] Distributors' Resolution No. 18

Resolved, That the use of buying power for the purchase of more photoplays than an exhibitor can consume, in order to deprive a competing exhibitor of the opportunity of purchasing his supply of photoplays, whether it be an at-

tempt to corner the market against such competing exhibitor, or whether it be with the thought of forcing a competing exhibitor out of business, or the compelling of such competing exhibitor to sell his theater, is an unfair trade practice.

Received without objection. (Tr. 159.)

Distributors' Resolution No. 19

Withdrawn. (Tr. 160.)

Producers' Resolutions

Of equal importance with exhibitors' Resolution No. 6 is the agreed statement of policy adopted by the producers and distributors, and accepted by the independent exhibitors. This action modifies the system of block booking in the following important particulars:

It eliminates double and triple coercive block booking, which is a vicious feature of the block-booking system, requiring exhibitors not only to take the block of pictures made by the producer offering them, but to take, also, the pictures of certain other producers.

It prevents the producer from refusing to lease feature pictures unless the exhibitor also leases news reels and short subjects, and these are not to be included in any block. This was a feature of the block booking which was strenuously insisted upon by the producers, and was strenuously complained of by exhibitors.

It relieves the exhibitor of paying for pictures in any block which will prove offensive to the patrons of his theater because of racial or religious subject matter.

It allows the exhibitor, after purchasing an entire block, to reject 10 per cent of the number of pictures in that block, but he must share part of the alleged loss by paying one-half the allocated price therefor; but if the picture is resold by the distributor, one-half of the net price received on such resale is credited to the exhibitor up to the amount of such obligation.

It prohibits reissues from being included in block with new pictures.

[fols. 919-924] Agreed Statement of Policy Proposed by Producer-Distributor Groups and Accepted by Exhibitors

1. The sales method known as block booking shall not be used for the accomplishment of any illegal purpose. (Tr. p. 385.)

2. No distributor will require as a condition of permitting an exhibitor to lease its pictures, that such exhibitors shall also lease pictures of another distributor. (Tr. p. 385.)

3. If an exhibitor shall claim within a reasonable time prior to the date fixed for the exhibition of any picture included in any block leased by him that such picture will be offensive to the clientele of his theater because of racial or religious subject matter, such claim shall be arbitrated by the board of arbitration of the proper zone and, if sustained, such exhibitor shall be relieved of obligation to take and pay for such picture. (Tr. p. 386.)

4. If any exhibitor who has purchased an entire block of pictures offered by any distributor so elects within a reasonable time prior to the date fixed for exhibition of any picture included in such block, such exhibitor may refuse to take such picture by paying one-half of the allocated price thereof, provided that the pictures so rejected out of any block shall not exceed 10 per cent of the number included in such block, and if a rejected picture is resold by the distributor, one-half the net price received on such resale shall be credited against the exhibitor's obligation in respect of such picture up to the amount of such obligation. (Tr. p. 386.)

5. Reissues will not be included in any block with new pictures. (Tr. p. 386.)

6. News reels and short subjects will not be included in any block with features, and the lease of news reels or short subject blocks shall not be required as a condition of being permitted to lease feature blocks, or vice versa. (Tr. p. 386.)

7. The matters dealt with by paragraphs three and four shall be covered by appropriate provisions to be included in the new standard form of contract. (Tr. p. 386.)

(No objection by exhibitors providing their future rights in this matter are not prejudiced. Accepted without objection as a resolution of the conference.)

[fol. 925] Recapitulation of Resolutions

Exhibitors' Resolutions

No. 1.—Adopted.

Nos. 2 and 5.—Sharp division of vote between unaffiliated and the other groups.

[fols. 926-928] Nos. 3-a, 3-b and 8.—Sharp division of vote between unaffiliated and the other groups.

No. 4.—Did not reach a vote.

Nos. 6, 7, and 9.—Adopted.

Distributors' Resolutions

No. 1.—Adopted.
No. 2.—Did not reach a vote.
Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11.—Adopted.
No. 12.—Withdrawn.
Nos. 13 and 14.—Adopted.
No. 15.—Withdrawn.
No. 16.—Adopted.
No. 16-A.—Adopted.
No. 17.—Withdrawn.
No. 18.—Adopted.
No. 19.—Withdrawn.

Producers' Resolutions

Nos. 1 to 7, inclusive.—All adopted.

Agreed statement of policy was presented by the producers and distributors and accepted by the unaffiliated exhibitors.

Respectfully submitted.

M. Markham Flannery, Director, Trade Practice Conferences.

November 25, 1927.

[fol. 929] Defendant's Exhibit A1

U. S. Dist. Court

We, the undersigned members of the Contract Committee appointed by the 1927 Motion Picture Trade Practice Con-

ference have agreed upon the following Standard Exhibition Contract.

Dated at Chicago, Ill., February 20th, 1928.

Representing unaffiliated Exhibitors of the United States: B. N. Bennsteir, R. R. Biechele, William Yamins. Representing Distributors: Felix F. Feist, R. H. Cochrane, Ned E. Depinet.

[fol. 930] *Direction to Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

*(Note.—This direction to Salesmen shall be printed upon but shall not be deemed a part of the Standard Exhibition Contract.)

Standard Exhibition Contract

Agreement, made in one or more counterparts, between —— ——, a corporation (hereinafter referred to as "the Distributor"), party of the first part, and the Exhibitor hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated party of the second part, witnesseth:

The parties hereto agree as follows:

First. The Distributor warrants that there is contained herein all of the numbered Articles of the "Standard Exhibition Contract" agreed upon by the Contract Committee appointed at the 1927 Motion Picture Trade Practice Conference (an authenticated copy of which has been filed [fol. 931] with the American Arbitration Association). The Distributor also warrants that any clauses in addition thereto appearing upon the Schedule have been ap-

proved by such Contract Committee, and that any additional clauses appearing upon a Rider, if any hereto annexed, are not inconsistent with any of such numbered Articles. It is agreed that any clauses contained in such Rider shall be of no effect unless such Rider be signed by the Exhibitor. It is agreed that any agreement contained in the Schedule covering or describing what photoplays are licensed hereunder and in respect of any license fee, exhibition dates and any provision permitted by the provisions of the numbered Articles hereof shall not be deemed an additional clause for the purpose of this Article.

Second. (a) The Distributor hereby grants to the Exhibitor, and the latter accepts, a license under the respective copyrights of the several photoplays designated and described in the schedule herein, subject to the terms and conditions hereinafter stated, to exhibit (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said schedule provided. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the schedule.

(b) In case any of such photoplays (except photoplays which shall be "roadshown") shall not be "generally released" by the Distributor for distribution in the United [fol. 932] States during the period beginning —— —, ——, and ending —— —, ——, such photoplays shall be excepted and excluded from this license unless the Exhibitor shall give written notice to the Distributor not later than thirty days after such last mentioned date that the Exhibitor elects to exhibit all of such photoplays hereunder. If such notice be given the Distributor shall deliver and the Exhibitor shall exhibit such photoplays as and when available for exhibition hereunder, except that any of such photoplays not so "generally released" within two years after such last mentioned date shall be also excepted and excluded. The Distributor may exhibit or license the exhibi-

tion of any photoplays excepted and excluded as aforesaid when and where desired by it, and all claims or causes of action in respect thereof are hereby expressly waived by the Exhibitor.

Third. The Exhibitor agrees to exhibit under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not to allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such photoplays, and for no other purpose.

Fourth. The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least three (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous Exhibitor of the positive print thereof.

[fol. 933] Fifth. Payment, if any, made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

Sixth. During the life of this Contract the Distributor agrees not to exhibit or license the exhibition of any such photoplays in conflict with the "run" or "protection period," if any, in the Schedule specified. Unless otherwise provided herein, such "protection period" shall be computed from the last date of exhibition of each photoplay as fixed herein. If "protection" is granted hereunder against a specified theatre or theatres which "protection" shall indicate that it was the intention of the Distributor to grant such "protection" against all of the theatres in the immediate neighborhood or vicinity of the Exhibitor's Theatre, then, unless otherwise provided in the Schedule, such "protection" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Seventh. The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof,

or otherwise in the Schedule provided for, a positive print suitable for exhibition of each of such photoplays for exhibition at the said theatre on the date specified or on the dates determined as hereinafter provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's Exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder. All deliveries other than at the Distributor's Exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at [fol. 934] least one hour before the usual time for the opening of the Exhibitor's Theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels and containers furnished therewith to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's Exchange or the last previous Exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's Exchange or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's Exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other Exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other Ex-

hibitor as shall be determined by Arbitration as provided for in Article Eighteenth hereof.

Eighth. The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in the [fol. 935] Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor, consistent with prior runs and/or protection heretofore or hereafter granted to other Exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the Exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date, or dates, so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates; failing to do so, then the Distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days' notice thereof to the Exhibitor.

(B) If no other date or dates within said thirty day period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice [fol. 936] thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided

in this paragraph "B", the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days' notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the Schedule, shall begin upon the fifteenth (15) day of the thirty-day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article Eighth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a par- [fol. 937] ticular star or director, the Exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Ninth. The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's Exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such

positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's Exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's Exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, [fol. 938] and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Tenth. The Exhibitor shall not be required to accept for any photoplay described in the Schedule as the photoplay of a star, or of a director, or based upon a specified story, book or play, or by an identifying description, any other photoplay of a different star or different director, or based upon a different story, book or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the Distributor to change the title of any of such photoplays, or, as respects any photoplay based upon any story, book or play, prevent the making of any alterations, changes in or adaptations thereof. The Distributor warrants that none of the photoplays licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the Schedule.

Eleventh. This contract shall not be assigned by either party without the written acceptance of the assignee and the

written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without the written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee, such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing to release the Exhibitor from such liability.

Twelfth. The Exhibitor agrees to run photoplays (excepting "news reels) as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public [fol. 939] authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as a "——." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "first run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to, and until after the completion of, the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in anywise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other "Standard Exhibition Contract" with any other exhibitor.

Thirteenth. The Distributor warrants that the photoplays herein provided for will not contain any advertising matter for which compensation is received by the Distributor.

Fourteenth. The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now

and or hereafter imposed or based upon the delivery and or the exhibition of positive prints of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any [fol. 940] such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Fifteenth. The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Sixteenth. In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor [fol. 941] shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance, provided, that if such delay and/or prevention of performance, caused as aforesaid,

shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months' period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, United States Postal authorities, delays in production or failure of the producers of any of such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, provided, however, that in case any such delay or prevention shall prevent the Distributor from "generally releasing" any such photoplay during the period specified in subdivision (b) of Article Second, the provisions of such subdivision shall govern, unless performance because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Distributor with respect to any such photoplay shall be waived. The resumption of performance [fols. 942] by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees to accept, pay for and exhibit any such photoplay at such later period pursuant to the terms hereof.

Seventeenth. The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Eighteenth. The parties hereto agree that before either of them shall resort to any court to determine, enforce or protect the legal rights of either hereunder, each shall submit to the Board of Arbitration (established or constituted pursuant to the Rules of Arbitration filed with the American Arbitration Association, 342 Madison Avenue, New York City, bearing date May 1, 1928 and identified by the signatures of the Contract Committee appointed at the 1927 Motion Picture Trade Practice Conference, a copy of which will be furnished to the Exhibitor upon request) in the city wherein is situated the Exchange of the Distributor from which the Exhibitor is served or if there be no such Board of Arbitration in such city then to the Board of Arbitration in the city nearest thereto (unless the parties hereto agree in writing that such submission shall be made to a Board of Arbitration located in another specified city), all claims and controversies arising hereunder for determination pursuant to the rules of procedure and practice adopted by such Board of Arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such Board of Arbitration in any such arbitration proceeding, and agree [fol. 9431] and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such Board of Arbitration, and consents to the introduction of such findings in evidence in any judicial proceeding.

In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other Standard Exhibition contract which the Exhibitor may have with the Distributor or any other distributor or to abide by and forthwith comply with any decision or award of such Board of Arbitration

upon any such claim or controversy so submitted, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 under each existing contract, such sum to be retained by the Distributor until the complete performance of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance, if any, to be returned to the Exhibitor; and in the event of the Exhibitor's failure to pay such additional sum within seven (7) days after demand, the Distributor may by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and or terminate this contract.

In the event that the Distributor shall fail or refuse to consent to the submission to arbitration any claim or con- [fol. 944] troversy arising under this or any other Standard Exhibition Contract which the Distributor may have with the Exhibitor, or to abide by and forthwith comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted within the number of days specified in Article Twentieth opposite the name of the City in which such Board of Arbitration is located, the Exhibitor may at his option terminate this and any other existing contract between the Exhibitor and the Distributor by mailing notice by registered mail within two (2) weeks after such failure, or refusal and in addition the Distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any Exhibitor until the Distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this Article Eighteenth shall not apply to any such claim or claims.

without prejudice to any other right or remedy which the party so terminated may have by reason of any such breach of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the law of the State of New York.

Nineteenth. This Contract is complete and no promises or representations have been made by either party to the other except as set forth herein.

Twentieth. This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any reason duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distribu- [fol. 945] tor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the Exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on acount thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 15; Dallas 30; Denver 20; Des Moines 15; Detroit 15; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore., 30; St. Louis 15; Salt Lake City 30; San Francisco 20; Seattle 30; Washington, D. C. 14.

This application and any application for other photoplays of the Distributor executed by the Exhibitor at the same time shall, for the purpose of this Article only, be deemed one application unless an agreement to the contrary contained in the Schedule is specifically signed by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall [fol. 946] be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Twenty-first. If the Exhibitor shall claim that the exhibition at the above theatre of any photoplay licensed hereunder will be offensive to the public in the place where such theatre is located, because of racial or religious subject matter, and if the Exhibitor shall give written notice to the Distributor of such claim within a reasonable time prior to the date fixed for the exhibition thereof hereunder, such claim shall be immediately submitted to the Board of Arbitration herein specified. If such Board of Arbitration shall specifically determine that the exhibition of such photoplay at such theatre will be offensive to said public because of racial or religious subject matter, then such photoplay shall be excepted from this contract, and not otherwise. The Distributor may exhibit or license the exhibition of any photoplay so excepted when and where desired by the Distributor free from all claims of the Exhibitor.

If the Distributor shall be of the opinion that any photoplay licensed hereunder will be offensive because of racial or religious subject matter, to the public in the place where the exhibitor's theatre is located, the Distributor shall have the right to except and exclude such photoplay from this contract, upon condition that such photoplay shall not thereafter be licensed for exhibition in such place unless such racial or religious subject matter is eliminated therefrom in which case such photoplay shall again be deemed licensed hereunder.

Twenty-second. If the license herein granted shall apply to an entire group of photoplays offered by the Distributor to the Exhibitor at one time, and not otherwise, the Ex- [fol. 947] hibitor shall have the right to exclude from this contract up to but not exceeding ten percent of the total number of such photoplays, but only if the Exhibitor shall give the Distributor written notice to such effect at any time not later than fourteen (14) days before the date fixed for the exhibition of any such photoplay hereunder, and if at the same time the Exhibitor shall pay to the Dis-

tributor one-half of the license fee payable in respect of any such photoplay. In computing such ten percent, fractions of less than one-half shall be disregarded. If any such photoplay shall, because of such exclusion, be thereafter licensed by the Distributor for the same run as that specified in this contract, for exhibition at another theatre where such excluded photoplay would not have been exhibited if not so excluded; then one-half of the license fee (up to but not exceeding the amount paid by the Exhibitor to the Distributor as a condition of so excluding such photoplay) received by the Distributor for such re-license, shall be credited to the Exhibitor by the Distributor.

If the license fee for any such photoplay so excluded is to be computed either in whole or in part upon a percentage of gross receipts of the Exhibitor's theatre, then for the purpose of computing such one-half of such license fee payable hereunder in respect of such photoplay, such gross receipts for each day that any such photoplay is licensed hereunder for exhibition thereat shall be deemed to be the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to such date of availability of such photoplay.

On the same side of the contract upon which the Exhibitor is required to sign, there shall be printed the Schedule. In the Schedule there shall be specified the license fees of the photoplays; the number of days for which each is licensed; the run and protection period, if any, agreed [fol. 948] upon; any provision in respect of the exhibition date or dates of the several photoplays; the description of the photoplays, which shall be identified by specific designation of a star or director or as based upon specific literary material or described by an identifying description of the story, provided that in long term and/or franchise and/or service contracts providing for more than one year's "releases," the photoplays may be generally described as photoplays released by the Distributor or a like general description, and in such long term and/or franchise and/or service contracts the provisions of the Standard Exhibition Contract may be incorporated therein. Any "short subject" photoplay may be identified or described by brand or similar description.

All approved additional clauses, if any, added to the Standard Exhibition contract and any provisions permitted

by the provisions of the numbered Articles shall be set forth in the Schedule.

No re-issue of photoplays or old negatives re-named shall be included in any group of new photoplays. No "short subjects" or "news reels" shall be included in any group of feature photoplays, and the licensing of "news reels" or "short subjects" groups shall not be made a condition of licensing the exhibition of feature photoplays or vice versa, provided that the Distributor may include in any long term, franchise and/or service contract, feature photoplays and/or "short subject" photoplays and/or "news reels."

Approved Additional Clauses

1. If this contract designates certain photoplays by title, it shall be non-cancellable as to such photoplays. If it embraces a series of photoplays not designated by title it may be cancelled as to such series by either party after two photoplays of such series have been exhibited and paid for, by notice in writing to the other party after playing [fol. 949] the second of said photoplays, such cancellation to take effect after —— (——) additional photoplays shall have been exhibited and paid for.

2.* The Distributor's right to approve or reject this application or any other application signed by the Exhibitor at the same time, or any other time, is not dependent upon the approval or rejection by the Distributor of such other application or this application.

Agreed to.

——, Exhibitor.

*(Note.—This clause may be added to the Schedule only in respect of photoplays produced by a producer not controlled by the Distributor, and only if the Distributor's contract with such producer provides that such pictures shall be sold separately and apart from other pictures distributed by the Distributor, and shall be of no effect unless specifically agreed to in writing by the Exhibitor.)

Road show.

[fol. 950] 3. The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any

time prior to the exhibition thereof hereunder, such of the photoplays licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that except in the cities of New York and Los Angeles not more than two of such photoplays shall be so roadshown.

If any such roadshow exhibition shall be in the city of New York, N. Y., and if the Exhibitor's theatre be situated in a territory then served by the Distributor's Exchange or Exchanges located in said city, the Distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said city upon sending written notice to that effect to the Exhibitor not later than eight weeks after the commencement of such roadshow exhibition in such city, provided the Distributor shall by like notice except and exclude such photoplay from all other contracts containing this clause and licensing the exhibition of such photoplay in such territory. Such exception and exclusion shall not be affected in case Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

If any such roadshow exhibition shall be in the city of Los Angeles, Cal., and if the Exhibitor's theatre be situated in the territory then served by the Distributor's Exchange or Exchanges located in said city, the Distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two [fol. 951] of such photoplays) so roadshown in said city, upon the same terms and conditions above provided for the exception and exclusion of photoplays roadshown in the city of New York.

If and when any such roadshow exhibition (except any roadshow exhibition in New York and/or Los Angeles) shall be in the territory served by the Distributor's Exchange or Exchanges serving the Exhibitor's theatre, such photoplay so roadshown in such territory shall forthwith be excepted and excluded from this license. The Distribu-

tor shall send written notice to that effect to the Exhibitor within fourteen (14) days after such roadshow exhibition commences.

The Distributor may so exercise such right to except and exclude any such photoplay from time to time, in the respective territories, as above defined, in the United States. Any photoplay so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such photoplay in the United States, and such photoplay shall be exhibited hereunder as and when available.

For each photoplay that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other photoplays licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to that effect not later than fourteen days before the date fixed for the exhibition hereunder of such other photoplay. The Distributor may exhibit and or license the exhibition of any and all photoplays excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by it, free from all claims of the Exhibitor in respect thereof.

[fol. 952] 4. If this contract calls for payment or any part thereof computed upon the Exhibitor's gross receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each photoplay for which payment is so required to be made. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such date or dates an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine the Exhibitor's books and records insofar as they relate to such gross receipts. The Distributor, or its authorized representative,

shall also have access for a period of sixty (60) days after the receipt by the Distributor of the final box office statement, to all of the Exhibitor's books and records for the purpose of verifying such box office statement. The Distributor agrees that any information obtained by it pursuant to the provisions of this clause will be treated as confidential, except in any arbitration proceeding or litigation in respect of this contract. The Distributor agrees, unless such representative be a regular employee of the Distributor, not to employ as such representative any person a resident of or regularly employed in the place where the Exhibitor's theatre is located, excepting with the consent of the Exhibitor.

5. If the license fee of any photoplay licensed hereunder is to be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit such photo- [fol. 953] play as provided in this contract, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such photoplay (in addition to any fixed sums payable hereunder in respect of such photoplay) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such photoplay should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such photoplay for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed, upon a sum equal to 75% of the gross receipts of said theatre for the last day of the exhibition thereat of such photoplay.

[fol. 953½] Clause 6—Next to last line, the word "new" eliminated.

Clause 11—First line—change "This" to "the."

Clause 11—Fourth line—strike out "above"—insert "hereinafter."

Claue 12—First line insert "(except News Reels)".

Clause 14—Last line—Change to "American Arbitration Assn.

Clause 18—Fill in blank space (May 1st, 1928).

Clause 18—Third paragraph, third line, strike the words "Providing for Arbitration."

Clause 18—Fourth paragraph, third line, strike the words "Providing for Arbitration."

Clause 18—Fourth paragraph, 12th line, strike out "or finding" and insert "or before refusal."

Clause 20—Paragraph 2, 12th line, strike out, El Paseo 25.

[fol. 954] DEFENDANTS' EXHIBIT B-1

We, the undersigned members of the Contract Committee appointed by the 1927 Motion Picture Trade Practice Conference have agreed upon the following *Rules of Arbitration* referred to and made a part of the Standard Exhibition Contract. Dated at Chicago, Ill., February 20th, 1928.

Representing unaffiliated Exhibitors of the United States: B. N. Bernstein, R. R. Biechele, Nathan James. Representing Distributors: Felix F. Feist, R. H. Cochrane, Ned E. Depinet.

[fol. 955] Rules of Arbitration

Rule 1

Election of Board of Arbitration

1. The Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of Trade (called Distributors' representatives) and three of whom shall be proprietors or managers of theatres in the territory where the Film Board of Trade is located (called Exhibitors' representatives) provided, however, that in no event shall such Exhibitors' representatives be managers of theatres owned or controlled by Producers or Distributors.

2. Each of the three Distributors' representatives and two alternate Distributors' representatives shall be appointed by the members of the Film Board of Trade. Each of the Exhibitors' representatives and two alternate Ex-

hibitors' representatives shall be appointed by the local Exhibitors' association. If there is no local Exhibitors' Association or if such Association fails to appoint Exhibitors' representatives or alternates then the President of the Film Board of Trade shall request the President of the Chamber of Commerce of the City in which the Film Board of Trade is located or if there is no such Chamber of Commerce or if the President thereof fails to appoint then the Mayor or other chief executive of such city, to appoint the three Exhibitors' representatives and two alternate Exhibitors' representatives. Failing such appointment the designation of Exhibitors' representatives and alternates [fol. 956] shall be made by the then President of the American Arbitration Association from among Exhibitors operating theatres in the territory wherein such Board of Arbitration is located who shall not be managers of theatres owned or controlled by Producers or Distributors.

3. Each of the Exhibitors' representatives and alternates and each of the Distributors' representatives and alternates shall serve for one month and thereafter until their respective successors are appointed, provided that any Exhibitors' representative or alternate appointed otherwise than by the local Exhibitors' Association shall be replaced by an Exhibitors' representative or alternate appointed by such Exhibitors' association as soon as such appointment is made.

4. No member of the Board of Arbitration shall hear or determine any case or controversy in which he has an interest, direct or indirect.

5. Upon written notice given to the Secretary of the Board of Arbitration at least seven (7) days prior to the date fixed for the hearing of any controversy submitted for arbitration each of the parties to such controversy shall have the right to challenge not more than two members of the Board of Arbitration, in which case the Distributors' alternate representative or representatives, or the exhibitors' alternate representative or representatives, as the case may be, shall act as a member or members of the Board of Arbitration to hear and determine such controversy in place of the member or members thereof challenged.

6. In case of the refusal, disqualification, challenge or disability of any Distributor's representative to hear and [fol. 957] determine any such controversy the remaining Distributor's representatives or representative shall appoint from the Distributor's alternate representative a substitute for such Distributor's representative.

In case of the refusal, disqualification, challenge or disability of any Exhibitor's representative to hear and determine any such controversy the remaining Exhibitor's representatives or representative shall appoint from the Exhibitor's alternate representatives a substitute for such Exhibitor's representative.

7. In case of a tie vote a majority of the members of the Board of Arbitration shall appoint a seventh arbitrator, and if they are unable to so appoint a seventh arbitrator, then the Secretary of the Board of Arbitration shall request the President of the Chamber of Commerce of the city in which the Film Board of Trade is located, or if there is none or if he fails to appoint, then the Mayor or other chief executive of such city to appoint a seventh arbitrator, who shall be neither a distributor nor exhibitor nor interested in the motion picture business.

[fol. 958] Rule II

Powers of Board of Arbitration

1. The members of the Board of Arbitration shall at each meeting thereof designate from among their number a Chairman whose duty and authority as Chairman shall be strictly limited to maintaining order to the end that all proceedings before the Board of Arbitration shall be conducted speedily and with decorum.

2. The Board of Arbitration shall have general power, after a thorough and impartial hearing of any dispute or controversy, (1) to determine such dispute or controversy, (2) to make findings thereon, (3) to direct what shall be done by either or both parties with respect to the matter in dispute, and shall fix the maximum amount (not exceeding that specified in the Arbitration Clause of the Standard Exhibition Contract) which each such distributor may de-

mand as security pursuant to said Arbitration Clause in the event of the failure of the exhibitor to submit to arbitration or to comply with the award.

3. It shall adopt its own rules of procedure and practice, which shall provide for reasonable notice to the parties of the time and place of the hearing and of the nature of the dispute, afford the parties an opportunity to be heard in person or by counsel and to submit evidence.

4. The findings, determination and directions of the Board of Arbitration upon such controversy shall be conclusive and binding upon the parties thereto.

5. In any controversy submitted to a Board of Arbitration upon the complaint of a Distributor which is deter- [fol. 959] mined in favor of the Exhibitor the Board of Arbitration may in its discretion include in its decision or award an award of a sum to be paid by the Distributor to the Exhibitor not to exceed the cost to the Exhibitor of railroad transportation from and return to the city or town in which the Exhibitor's theatre is located and an additional sum not to exceed $10 provided the Exhibitor has attended the hearing.

6. The Board of Arbitration shall not have power or authority to adopt or apply any rule which shall be at variance with any of the provisions of the Standard Exhibition Contract or the rights and obligations of the parties thereunder.

7. The Board of Arbitration shall not entertain a claim or controversy unless the same arises under a contract, other than those mentioned in paragraphs (a), (b) and (c) of this Rule, excepting with the written consent of both parties to such claim or controversy.

8. Every dispute or controversy must be submitted for determination to the Board of Arbitration within nine months after the date of the breach of contract or of the act of omission or commission out of which such dispute or controversy shall have arisen. A dispute or controversy shall be deemed submitted when a written statement thereof is delivered to the Secretary of the Board of Arbitration. A claim or controversy which cannot be submitted for arbi-

tration because of the limitations of time prescribed in this paragraph may not be introduced as a counterclaim.

9. Members of the Film Board of Trade shall not proceed [fol. 960] as provided in paragraph three of Rule IV of these Rules unless the decision or award of the Board of Arbitration determines a claim or controversy arising out of

(a) A contract which contains or incorporates by reference all of the numbered Articles of the Standard Exhibition Contract filed with the Motion Picture Producers & Distributors of America, Inc., identified by the signature of its President on March 1, 1926, or

(b) A contract bearing a date prior to the 1st day of April, 1926, the provisions of which are substantially in accord with the Uniform Exhibition Contract, or

(c) A contract which contains or incorporates by reference all of the numbered Articles of the Standard Exhibition Contract filed on May 1, 1928, with the American Arbitration Association, identified by the signatures of the Contract Committee appointed by the 1927 Motion Picture Trade Practice Conference.

Rule III

Reference of Controversies to Board of Arbitration

1. Whenever possible, Distributors and Exhibitors shall endeavor to settle claims and controversies without resorting to arbitration.

2. Whenever a member of the Film Board of Trade shall be unable to settle a claim or controversy with an exhibitor arising under a contract containing the Arbitration Clause, such member shall notify the Secretary of the Film Board [fol. 961] of Trade (located in the city out of which such exhibitor is served) that such member desires to submit the claim or controversy to the Board of Arbitration having jurisdiction thereof, advising the Secretary of the name and address of the exhibitor and the nature of the controversy. The Secretary shall thereupon give written notice to the member, the exhibitor, the local Exhibitors'

Association and the Board of Arbitration that the controversy has been referred to the Board of Arbitration at the request of such member and of the time and place of the hearing.

3. Likewise upon receipt by the Secretary of the Film Board of Trade of a notice from any exhibitor that such exhibitor desires to submit to arbitration a controversy with a distributor arising under a contract containing the Arbitration Clause, the Secretary shall give written notice to the exhibitor, the distributor, the local Exhibitors' Association and the Board of Arbitration having jurisdiction, that the controversy has been referred to the Board of Arbitration at the request of the exhibitor.

4. In case either party to a controversy referred to the Board of Arbitration shall demand a hearing thereon in less than five days for reasons deemed by the Board of Arbitration sufficient, the notice provided for in paragraphs 2 and 3 hereof may be dispensed with and in such case twenty-four hours' written notice of the time and place of the hearing shall be given to the parties to the controversy, the local Exhibitors' Association, and the members of the Board of Arbitration.

5. Nothing herein contained shall be construed to pro- [fol. 962] hibit the filing of claims or controversies by members or exhibitors directly with a Board of Arbitration having jurisdiction thereof, pursuant to the rules of procedure and practice adopted by such Board of Arbitration.

6. Each of the parties to a controversy submitted for arbitration shall have the right to one adjournment of the hearing thereof until the date of the next succeeding regular meeting of the Board of Arbitration by sending a written demand therefor at least three (3) days prior to the date fixed for the hearing of such controversy, addressed to the Secretary of the Board of Arbitration.

7. If either of the parties to a controversy submitted for arbitration fails to appear at the time fixed for the hearing thereof, the default of such party shall be noted. In case of a default in appearance of the complainant, the complaint shall be dismissed, and in case of a default in appearance of the respondent, the Board of Arbitration

shall hear the evidence of the complainant and shall make an award to the same effect as if both parties had been present.

The Board of Arbitration may, in its discretion, upon application setting forth reasonable grounds, made within seven days after an award has been rendered open the default of either party upon such terms and conditions as may be deemed just.

[fol. 963] Rule IV

Enforcement of Decisions of Board of Arbitration

1. The Secretary of the Board of Arbitraton shall from time to time notify in writing the Secretary of the Film Board of Trade located in each city out of which the exhibitor is served of (a) the name and address of each exhibitor who has been found by such Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration; and (b) the maximum amount (not exceeding that specified in the Arbitration Clause) which each distributor may demand as security pursuant to such clause.

2. Upon receipt of such information, the Secretary of each such Film Board of Trade shall advise all members of such Film Board of Trade for their exclusive and confidential information (a) of the name and address of every exhibitor who shall have been found by a Board of Arbitration (1) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of such Board of Arbitration, and (b) of the sum which such Arbitration Board has fixed as the maximum amount which distributors may demand as security from such exhibitor.

3. Subject to the provision of Rule II, on receipt of any such notice, each member having a contract (or representing a distributor having a contract) containing the [fol. 964] Arbitration Clause with any such exhibitor shall

demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract plus the rental contracted to be paid therefor, and in no case shall exceed the maximum amount fixed by the Board of Arbitration as aforesaid. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such distributor shall proceed to suspend service under each contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a period of ten days such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended service under any such contract with such exhibitor shall thereafter resume service under any such contract unless and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board. Upon the happening of either of such events service under such contract shall be promptly resumed by such member or distributor.

4. In case either party to a dispute or a controversy arising under a Standard Exhibition Contract submitted to the Board of Arbitration shall claim that a right or [fol. 965] liability, under the same or another Standard Exhibition Contract, exists or may exist (because of the facts involved in such controversy) against or in favor of some other party, not then a party to the controversy but a party to a Standard Exhibition Contract with the Distributor a party to such dispute or controversy, the Board of Arbitration on application of either party shall, by written notice to such effect, make such other party a party to the controversy, and an award, if made in favor of or against such other party, may be enforced as provided in these Rules and Regulations.

5. The Secretary of the Board of Arbitration shall from time to time notify the Secretaries of the Film Boards of Trade specified in paragraph 1 of this Rule IV in writing

of the name and address of each exhibitor previously found by the Board of Arbitration to have committed one or more of the acts specified in paragraph 1 of this Rule IV, who shall thereafter have submitted to arbitration, or shall have complied with the decision of the Board of Arbitration. Upon receipt of any such information the Secretaries of the said Film Boards of Trade shall forthwith advise in writing all members of said Film Boards of Trade for their exclusive and confidential information of the name and address of every such exhibitor, and thereupon each member or distributor having suspended service under any such contract with such exhibitor (as provided in paragraph 3 of this Rule IV) shall resume service thereunder. [fol. 966] The Secretary of the Board of Arbitration shall from time to time notify in writing the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association of the name of each member and distributor represented by a member found by the Board of Arbitration (1) to have refused to submit to arbitration a controversy with an exhibitor arising under a contract containing the Arbitration Clause, or (2) to have refused to comply with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall, from time to time, advise all members of the Film Board of Trade of the name of every member and distributor represented by a member found by the Board of Arbitration (a) to have refused to submit to arbitration a controversy arising under a contract containing the Arbitration Clause, or (b) to have refused to comply with a decision of the Board of Arbitration. Thereafter such member or distributor shall not be entitled to redress from the Board of Arbitration having made such a determination or finding upon any claim or controversy against any exhibitor until such member or distributor has submitted to arbitration or has complied with the decision or award of such Arbitration Board, and there shall be added to the amount of such award a sum equal to ten per cent (10%) thereof for each thirty days after the time fixed for compliance therewith that such member or distributor fails or refuses to comply with such award; provided that demand [fol. 967] for the payment of such award shall have been

made by registered mail upon the home office of such Distributor.

7. The Secretary of the Board of Arbitration shall from time to time notify the Secretary of the Film Board of Trade and the Secretary of the local Exhibitors' Association in writing of the name of each member or distributor represented by a member previously found to have committed one or more of the acts specified in paragraph 6 of this Rule IV, thereafter submitting to arbitration or having complied with a decision of the Board of Arbitration. Upon receipt of such information the Secretary of the Film Board of Trade shall advise in writing all members of the Film Board of Trade of the name of such member or distributor, and thereupon such member or distributor shall again be entitled to redress from such Board of Arbitration.

Rule V

Damages

1. The amount of damages which the Board of Arbitration shall award for "bicycling," "switching" or any other unauthorized exhibition of a photoplay shall be determined and limited as provided in Section 25 of the Copyright Law of the United States, provided that if the Board of Arbitration shall find that any such act was not wilfully done then such damage shall not be less than one hundred dollars ($100).

2. If in a controversy in which a claim is made against a Distributor for damages for failure or delay in delivery any photoplay, and the Distributor's defense to such claim is that such failure or delay was caused by reason of the failure or delay of another exhibitor in returning the print of such photoplay, or in forwarding it to the complaining Exhibitor as directed by the Distributor the Board of Ar- [fol. 968] bitration shall postpone the hearing of such controversy and shall direct that such other Exhibitor be brought in and made a party thereto. If the Board of Arbitration shall find that the complaining Exhibitor is entitled to damages on account of such claim the Board of Arbitration shall make an award in favor of such Exhibitor

against the Distributor. If the Board of Arbitration shall find that such failure or delay was caused by such other Exhibitor, the Board of Arbitration shall at the same time make an award in favor of the Distributor against such other Exhibitor for the same amount of damages awarded to the complaining Exhibitor against the Distributor.

Rule VI

Amendments

These rules and regulations shall not be amended or repealed by the Boards of Arbitration or the Film Boards of Trade without the approval first obtained of the beforenamed Contract Committee.

[fol. 969] DEFENDANTS' EXHIBIT C"

(Statement Issued by Contract Committee Feb. 21, 1928)

The National Contract Committee of the Motion Picture Industry, which has been working out the details of a new contract under which practically all of the motion pictures shown in the United States will be leased by theatre owners, concluded its three week session last night at midnight.

The committee, which is composed of motion picture exhibitors and distributors, was gratified because certain difficulties which seemed at times insurmountable were finally overcome. A complete agreement was reached on all points, including the rules of arbitration. The only matter which had to be put over to the next meeting of the committee, which is scheduled for June, was a new problem relating to a plan of devising ways and means of enabling state exhibitor organizations, from which are drawn the exhibitor arbitrators, to function properly in their various endeavors in the general interests of the industry. Last year by the cooperation of exhibitor and distributor arbitrators almost twelve thousand cases were disposed of by arbitration.

The new contract is believed to be a vast improvement over its predecessor, giving promise of doing away with

many sources of discontent in the moving picture business. It is patterned along the lines agreed upon at the Motion Picture Trade Practice Conference held last fall in New York City, and will be put into use next May.

So many complicated matters are to be handled under the terms of the new contract that the negotiators have arranged at an early date to publish the document with complete explanations of its various clauses and broadcast it in booklet form to the entire industry that there may be a clear understanding of its provisions.

[fol. 970] DEFENDANTS' EXHIBIT D'

Mr. R. F. Woodhull, President of the Motion Picture Theatre Owners of America, who acted as Chairman of the Unaffiliated Group of Exhibitors delegates to the recent Motion Picture Trade Practice Conference; and Mr. R. H. Cochrane, Vice-President of Universal Pictures Corporation, who was Chairman of the Distributor Group at the Trade Conference, said, in issuing the new Standard Exhibition Contract and Arbitration Rules agreed upon at Chicago by the Contract Committee appointed by all the delegates at the Trade Practice Conference:

"We are more than pleased with the really fine work of the Contract Committee, the members of which gave unstintingly of their time at a great sacrifice of their personal interests to do a constructive piece of work for the motion picture industry at large.

"It is the belief of the Committee that the new Contract and Rules are a great improvement over those which they will supercede, beginning May 1st, 1928,—and that the new provisions and those which were omitted from the old Contract and Rules, will do much to eliminate many points of trade differences between exhibitors and distributors of motion pictures."

[fol. 971] Following were the members of the Committee representing the Unaffiliated Exhibitors:

Mr. Ben Berinstein of Los Angeles, Cal.

Mr. Nathan Yamins of Fall River, Mass.

Mr. R. R. Biechele of Kansas City, Mo.
(Mr. H. M. Richey, of Detroit, Mich., Secy.)
Representing the Affiliated Exhibitors:
Mr. Fred Desberg of Cleveland, Ohio, and Mr. Edward Schiller of New York.
Representing the Distributors:
Mr. Felix F. Feist, Mr. Ned Depinet,
Mr. Phil Reisman.

[fol. 972] DEFENDANTS' EXHIBIT E'

Whereas, the current Standard Exhibition Contract was agreed upon by the Motion Picture Trade Conference Contract Committee at Chicago on the 21st day of February, 1928, with the understanding that if prior to June 1, 1928 a plan to finance the operations of the Boards of Arbitration and of the national and all local exhibitor organizations was not agreed upon the Contract Committee would again meet at a time and place to be designated to make whatever amendments, eliminations from, or additions to the contract deemed necessary, and

Whereas, the Contract Committee having again met in the City of New York on October 4th and 5th, 1928, and having considered and discussed many plans and suggestions to finance the operations of the Boards of Arbitration and the national and all local exhibitor organizations, and

Whereas, the Committee have reached the conclusion that the financing of the Boards of Arbitration should not be linked with the financing of the national and local exhibitor organizations, and

Whereas, the Committee have agreed upon a plan to finance the operations of the Boards of Arbitration,

Now, therefore, the members of the Contract Committee hereby agree that the contract as agreed upon at Chicago on February 21, 1928 be and the same hereby is finally agreed upon as the Standard Exhibition Contract of the [fol. 973] motion picture industry, without reservations or exceptions of any kind or character, the Contract Committee, however, continuing to act in relation thereto under and

in accordance with the Resolution of the Trade Practice Conference which appointed the Committee.

Dated New York City, October 5, 1928.

Felix F. Feist, J. I. Schnitzer, Ned E. Depinet, Gordon Chris, Secretary. Attest: R. H. Cochrane, Chairman. R. R. Biechele, Nathan Yamins, B. N. Berinstein, H. M. Richey, Secretary. Attest: [Signature illegible,] Chairman.

[fol. 974] Defendants' Exhibit F1

An Analysis of the 1928 Standard Exhibition Contract and Rules of Arbitration

[fol. 975] The New Standard Exhibition Contract and the Rules of Arbitration agreed upon at Chicago by the Contract Committee appointed by the 1927 Trade Practice Conference which contract will go into effect May 1st, 1928, differ from the current contract and rules in the following respects:

Article First: Warranties in addition to those in the current contract provide that all additional clauses (which must appear in the Schedule) must be approved by the Contract Committee.

If any additional clauses which have not the approval of the Contract Committee are added they must appear upon a rider attached to the contract, but will be of no effect unless the rider is signed by the exhibitor, nor if their provisions are inconsistent with those of any of the twenty-two numbered articles of the contract.

Further reference to additional clauses will be made under the heading "Approved Additional Clauses."

Article Second: In the current contract and in the new one it is provided that the pictures be exhibited within one year from the first play date, but the new contract permits by agreement written in the Schedule a longer or shorter period. For example, in a contract for fifty-two pictures it may be agreed that two pictures each week shall be exhibited (a period less than one year) provided such

agreement is expressed in writing in the Schedule. Or in the case of a contract for forty pictures it may be agreed that one picture shall be exhibited every other Monday commencing (e. g.) on October 1st, 1928, necessarily requiring a longer period than one year to complete the showing of all pictures. Such provisions are in respect to exhibition dates and when set forth in the Schedule supersede the one year provision.

The last sentence of this article is a new provision limiting the right to exhibit the pictures in but one theatre. For example, if a contract provides for the exhibition of the pictures for two days at the Strand or Rialto Theatres, the pictures may not be shown one day at the Strand and the other day at the Rialto. Each picture may be shown only at one of these theatres for two consecutive days unless in the Schedule there is a written provision setting forth an agreement for a different arrangement.

In this connection, when two or more theatres are specified in one contract, to avoid disputes care should be exercised to provide that the word "or" is always used between the names of the theatres. Neither the word "and" nor a dash (—) should be so used.

Paragraph (b) of this Article is a new provision which excludes from a contract all pictures (excepting those which have been road-shown) which have not been generally released during the releasing season or year specified in this paragraph, unless the exhibitor gives to the distributor written notice within thirty days after the end of the stated releasing season or year that he desires all such pictures delivered to him. If after such notice any of such pictures are generally released at any time during [fol. 976] the following two years they must be delivered to the exhibitor. If they are not generally released within two years from the end of the releasing season specified in the contract they are excluded from the contract and all claims to them are waived by the exhibitor. If the exhibitor within the thirty days does not give written notice that he desires all such pictures and any of them are thereafter generally released they may be licensed by the distributor to any other exhibitor free of all claims of the exhibitor. If there are, for example, four out of fifty-two pictures

which have not been generally released during a releasing season and the exhibitor desires these four pictures, he must give a written notice to such effect but he may not select one or more of the four, he must elect to take all of them or they will be excluded from the contract. For example, if the distributor's releasing season is from September 1, 1928, to August 31, 1929, and fifty-two pictures have been contracted for and but forty-eight have been released between those dates, the four that have not been generally released are automatically excluded from the contract unless the exhibitor notifies the distributor before September 30, 1929, that he desires all of the four pictures not so released. Even if such notice is given and any of such pictures are not released by August 31, 1931, they will be deemed excluded from the contract.

The provisions of Subdivision (b) relate to the period within which the pictures must be released, and have no bearing upon the period referred to in Subdivision (a), which is the period within which they must be exhibited.

Article Third. This is substantially the same as Article Third of the current contract.

Article Fourth. The provisions of this article are exactly the same as the provisions of Article Fourth of the current contract.

Article Fifth. This article is the same as Article Sixth of the current contract. (Article Fifth in respect to percentage bookings has been omitted from the numbered articles of the new contract. Its provisions changed in some respects and with additions appear as one of the "Approved Additional Clauses" which will be commented upon hereafter.)

Article Sixth. The first two sentences of this article are exactly the same as the first two sentences of Article Seventh of the current contract excepting the word "last" has been substituted for the word "first," thus providing that the period of protection shall be calculated from the last day instead of from the first day of the exhibition period contracted for. If therefore fourteen days' protection is granted and the last day of the exhibition of a picture is

September 10th, the protection period ends at midnight on September 24th.

The remainder of this article is new matter and provides that if protection is given against one or more theatres and from the grant of protection it can be reasonably inferred that it was the intention of the distributor to grant protection against all theatres in the immediate neighborhood or vicinity of the exhibitor's theatre, then unless a contrary intent is expressed in the Schedule the protection granted will be held to cover any theatre that is opened in such neighborhood or vicinity after the date of the contract. [fol. 977] This applies to new theatres as well as closed theatres which are reopened, provided, of course, the intention to cover new and reopened theatres can be gathered from the protection provision in the Schedule. Therefore if it is intended that a new or reopened theatre is not to be included in protection, it should be so specifically stated in the Schedule.

Article Seventh. This article is a consolidation of Articles Eighth and Tenth of the current contract slightly amended and with new matter. By the addition of the words "suitable for exhibition" the distributor is obligated to deliver prints in a condition which can be said to be reasonably suitable for exhibition.

The time of delivery of prints has been more definitely fixed, making it incumbent upon the distributor to ascertain from the carrier to whom delivery is made if the carrier's time schedule followed in the usual and ordinary course of business permits the delivery of prints at the exhibitor's theatre or the place where such theatre is located at least one hour before the usual time the exhibitor opens his theatre. If the carrier's time schedule will not permit of delivery to be made at such time then delivery to the carrier must be made by the distributor in sufficient time so that delivery can be made by the carrier at least one hour before the exhibitor's usual opening time.

The provision is the current contract (Article Tenth) requiring the exhibitor who claims damages because of the failure or delay of a prior exhibitor in forwarding a print to assert such claim against such delaying exhibitor has been omitted. Such claim may now be made by the exhibitor directly against the distributor.

In this connection see Subdivision 2 of Rule V of the Rules of Arbitration which has been added to the Rules giving the distributor the right to require the Board of Arbitration to bring the offending exhibitor before the Board of Arbitration and make him a party to the same arbitration proceeding in which is involved the claim of the exhibitor against the distributor. And also providing that if the offending exhibitor is found at fault, the Board of Arbitration is obligated to make an award against the offending exhibitor in favor of the Distributor at the same time that the award against the Distributor is made in favor of the complaining exhibitor.

Article Eighth. The provisions of this article are the same as Article Ninth of the current contract, excepting that they have been rearranged with a view of making them easier to understand.

A new and important addition is that which makes a notice of availability ineffectual unless a print of the photoplay for which an available date is fixed in the notice is in the exchange out of which the exhibitor is served at the time the notice is mailed to the exhibitor.

For example, if a notice of availability is mailed to an exhibitor on October 1st fixing October 15th as the date upon which a picture will be available and a print of such picture does not arrive from the laboratory, or from another exchange, or other place from which released prints are shipped to an exchange in the usual and ordinary course of business until October 10th, it would be necessary on or after October 10th to mail a new notice of availability to [fol. 978] such exhibitor and the first available date that can be fixed in the new notice, provided it is mailed on October 10th, is October 25th. To avoid rendering a notice of availability ineffective, such notice should not be mailed until prints are in the exchange.

In the paragraph of this article which provides for the designation by the distributor of play dates if the exhibitor fails to select them within the fourteen day period after the mailing of a notice of availability, a new provision has been added which fixes the beginning of the period of protection, if any granted, as the fifteenth day—instead of the thirtieth day—of the thirty day period of availability.

For example, under a contract providing for a three day run and thirty days protection, if a notice of availability is mailed January 1st fixing January 15th as the date of availability, the exhibitor may before January 15th select dates within the thirty day period beginning January 15th. If the exhibitor fails to so select dates the distributor can designate dates at any time by mailing fourteen days notice of such dates. If the distributor then designates February 15th, 16th and 17th, the period of protection begins on January 30th and ends March 1st, cutting down the exhibitor's protection from March 19th, which he would have had under the protection clause of his contract had he not failed or refused to select dates.

The following illustrations cover all the provisions for the designation of play dates:

October 1.—Distributor mails notice of availability.

October 15.—Is the earliest available date that can be designated because at least fifteen days' notice must be given.

October 15.—Is the last day for the exhibitor to give dates in writing to distributor because he has fourteen days to do so after receiving the availability notice.

October 15 to November 15.—This is the period from which the exhibitor must select dates because he has a thirty day period from the availability date, (October 15,) within which to select dates.

If a date selected by the exhibitor is not open to him, he must immediately choose another date within the same thirty day period. If he does not do so, the distributor has the right to designate it for him.

November 15.—Is the date which the exhibitor selects but he is informed it is not open for him. He then fails to choose another date within the same thirty day period.

November 29 to December 29.—The distributor may then designate any date within this period. (November 29 is at least two weeks from the date first chosen by the exhibitor [fol. 979] (November 15) and December 29 is six weeks from that date). The distributor is limited by these two dates. The first one is not earlier than two weeks and the second is not more than six weeks from the date chosen by the exhibitor.

When the distributor thus selects a date for the exhibitor, he must give fourteen days' written notice to the exhibitor.

If the original date chosen by the exhibitor is not open to him and he selects another date within the same thirty day period but no other date is open, then the exhibitor can choose the date.

November 29 to December 29.—The exhibitor may select any date within this period. (November 29, in the example, is at least two weeks distant from the last day of the thirty day period (November 15) and December 29 is six weeks from the last day of that period.) The exhibitor is limited by these two dates, the one not earlier than two weeks, the other not more than six weeks from the last day of the thirty day period.

The exhibitor must exercise this right to choose his date immediately after learning that no other dates are open to him during the same thirty day period.

November 29 to December 29.—If the exhibitor does not exercise this right immediately, the distributor may designate a date within the same period by giving the exhibitor fourteen days' notice in writing of such date.

If after the original mailing of the availability notice the exhibitor does not within the fourteen days given him select any dates the distributor may then at any time thereafter designate the dates.

October 29.—Is the earliest date that the distributor may then designate. The exhibitor had up to October 15 to choose a date. Having failed to do so, the distributor may on that day select a date by giving fourteen days' written notice of the date selected.

The only limitation is that the distributor must not designate a day which is before the first availability date (October 15).

When the exhibitor fails to select dates after the notice of availibility has been sent to him, the distributor in assigning dates is subject to the following limitation:

November 30.—If another exhibitor has a "run" immediately ahead of the exhibitor and has played the picture, the distributor must assign a date within forty-five days [fol. 980] after the availibility date first given.

In this example, the availability date is October 15. November 30, which is forty-five days later, is therefore the last date which may be assigned by the distributor.

When it is necessary for the distributor to assign dates because the exhibitor has ignored the availability notice, the protection period in the contract is affected as follows:

Assuming Exhibitor X has seven days' protection over Exhibitor Y,

October 15 to November 15.—Is the thirty day period during which X may choose a date. He fails or refuses to do so.

November 15.—Is the date that the distributor may and does assign.

November 16.—Is the first date that Exhibitor Y may play. Even though X has seven days' protection over Y, Y can play the next day after X plays. For the following reasons:

X's protection is computed from the fifteenth day of the thirty day period (October 15 to November 15). The fifteenth day is October 30. Counting seven days' protection from October 30 makes the last day of protection November 6. If X plays the picture on November 15, Y may therefore play it on the very next day. The protection period of X expired November 6 enabling Y to play on November 16.

If in computing the fifteenth day as above illustrated X's protection period expired on November 22, then Y could play beginning on November 23.

It should be kept in mind, however, that only the protection period is affected by the failure or refusal of an exhibitor to choose dates. The "run" is not affected. In other words, X has not lost the right to play ahead of Y. He has merely lost the right to have the full advantage of his protection period. However, an exhibitor loses both his run as well as his protection if he fails or refuses to pick up the print of a picture on the date assigned to him by the distributor.

Article Ninth. This article is the same as Article Eleventh of the current contract with the following changes and additions:

The sum of "four cents" per foot and "laboratory cost" for colored prints fixed as the sum payable in settlement

of claims for loss, theft, destruction of, or injury to prints have been eliminated and now the amount payable by the exhibitor on such account is the cost of replacement at the distributor's exchange. In support of a claim by a distributor for such damages, evidence of the cost of replacement should be obtained and presented to the Board of Arbitration to sustain the claim.

A new provision is added which relieves the exhibitor [fol. 981] from liability for the damage or destruction of a print if the exhibitor establishes by evidence submitted to the Board of Arbitration that the damage or destruction occurred while the print was in actual transit from the exhibitor. This provision does not relieve the exhibitor from liability for damage to or loss of a print between the time delivery of a print is made to a carrier for shipment to him or to him directly and the time it leaves the exhibitor's possession in transit from him.

Under the provisions of the current contract if a print were lost or stolen and on account of such loss or theft the exhibitor had reimbursed the distributor and thereafter such print was recovered or returned to the distributor the exhibitor was entitled to receive a credit for the amount he had paid. A provision in the new contract has been added to this article which gives the exhibitor the option to require payment of the amount so paid or a credit for such amount.

By the omission of the words in Article Eleventh of the current contract "on the day of receipt of such print," the exhibitor need not telegraph the distributor's exchange on the day of the receipt of the print that it was received in a damaged or partially destroyed condition. The presumption of liability against him for such damage or destruction will be avoided provided he advises the exchange by telegraph of the damage discovered between the time of the receipt of the print and prior to its second public exhibition.

Article Tenth is a revision with new matter of Article Twelfth of the current contract.

Unless each picture contracted for is that of a star, or of a director, or one based upon a specified story, book or play named in the contract, it must in addition to the title being named in the contract be susceptible of being

identified by a reasonably sufficient description of it which must appear in the Schedule. This for the reason that the exhibitor will not be required to accept any picture which he has contracted for, a substitute picture.

The provisions of this article permit the distributor to change the title of any picture contracted for and to make alterations or changes in or adaptations of the author's treatment of the story, book or play upon which the picture is based.

Article Eleventh: Is the same as Article Thirteenth of the current contract.

Article Twelfth: Is the same as Article Fourteenth of the current contract, excepting that "news reels" may be cut or rearranged without the approval of the distributor.

Article Thirteenth: The same as the provisions of Article Fifteenth of the current contract, excepting for the addition of the words at the end of the article "by the Distributor."

Article Fourteenth: Is the same as Article Sixteenth of the current contract.

Article Fifteenth: Is the same as Article Seventeenth of the current contract.

Article Sixteenth: The first paragraph of this article is the same as the first paragraph of Article Eighteenth of the current contract, excepting that the time for the sending of a notice of cancellation by the exhibitor on account of delays or prevention of performance by the exhibitor [fol. 982] because of the happening of any of the causes enumerated in the article has been changed.

Under the current contract the notice of cancellation had to be sent within ten days after the expiration of a three months' period of delay or prevention of performance. Under the new contract such notice may be sent within a reasonable time after such three months' period, the ten days' limitation having been omitted. What is a reasonable time must be determined by the Board of Arbitration upon the facts and circumstances in each case.

In the second paragraph of this Article omissions and changes have been made.

To the causes excusing the distributor from delays in performance have been added the delays of the United States Postal Authorities; and from such causes there have been omitted delays caused by the failure or delay of any prior exhibitor in returning or forwarding prints. This omission was made to conform to the elimination of the provision in the current contract requiring the exhibitor to assert a claim on such account against the prior exhibitor.

The provision in the current contract which gave both parties the right to cancel pictures the delivery of which was delayed or the production of which was prevented for a period of three months because of the happening of any of the causes stated in the article, has been omitted and there has been added the provision that paragraph (b) of Article Second shall govern in case any of such pictures are not generally released for such causes during the distributor's releasing year. For example, under the current contract if the production of a picture is prevented for three months, both the distributor and the exhibitor have the right upon giving notice within ten days from the expiration of the three months period to cancel the picture. Under the new contract neither the exhibitor nor the distributor have the right to cancel the picture. If the picture is not released within the distributor's releasing year (which must be specified in paragraph (b) of Article Second of the contract) the exhibitor would have the right upon giving the distributor notice within thirty days from the expiration of the releasing year to require delivery of the picture when produced (as well as all others not released during the releasing year) or failing to give such notice the picture (and the others not released in the releasing year) will be deemed eliminated from the contract. If the picture, performance as to which was prevented, is not released within two years from the end of such releasing year then of course under the provisions of paragraph (b) of Article Second the picture is eliminated from the contract even though the exhibitor has by notice elected to take it.

Article Seventeenth: Is the same as Article Nineteenth of the current contract.

Article Eighteenth: Is the Arbitration Clause. This article is substantially the same as Article Twentieth of the current contract, excepting there has been added a provision which definitely fixes the time within which the distributor must comply with any award against the distributor. This time is determined by the location of each Board of Arbitration. For example, in New York City, seven days; in San Francisco it is twenty days. For the [fol. 983] length of time in other localities see the second paragraph of Article Twenty-second of the new contract.

Article Nineteenth: Is the same as Article Twenty-first of the current contract with the addition of the first five words in Article Nineteenth of the new contract.

Articles Twentieth and Twenty-first are entirely new and were incorporated in the new contract to carry out the declaration of policy, in respect to block booking and pictures offensive to any race or creed, made by the distributors at the 1927 Motion Picture Trade Practice Conference.

Article Twentieth provides that when an exhibitor contracts for all of a group of pictures which have been offered him as a group at one time he may exclude or cancel out not to exceed ten per cent of the total number of pictures so contracted for. For example, if an exhibitor is offered fifty pictures, and he contracts for all of them, he is given the right to exclude or cancel not more than five of such pictures. He would be entitled to cancel five if the number offered and contracted for were forty-five, but only four if the number offered and contracted for were forty-four, because fractions of less than one-half must be disregarded. If the exhibitor is offered fifty pictures, and he buys less than that number, for example, thirty, the exhibitor is given no right to exclude or cancel out any of the thirty contracted for.

Having contracted for all of the total number of pictures which have been offered the exhibitor as a group at one time, to avail himself of his right to exclude or cancel out ten per cent of such number the exhibitor must give to the distributor written notice with regard to each picture he desires to exclude or cancel. This notice must

be given not later than fourteen days before the date fixed for the exhibition of each picture he wishes to exclude and at the same time such notice is given the exhibitor must pay to the distributor one-half of the rental price specified in the contract to be paid for such picture. In case any of the pictures which the exhibitor elects to exclude or cancel out have been contracted for on a percentage basis, the second paragraph of Article Twentieth provides how the one-half of the rental price shall be computed.

If any picture which the exhibitor has excluded or cancelled out is relicensed for the same run as that which the exhibitor contracted for to another exhibitor to whom the distributor would not have licensed such picture had it not been cancelled, the distributor must credit the exhibitor with one-half of the rental price the distributor receives upon such relicense up to, but not exceeding, the amount paid by the exhibitor when he cancelled out such picture. For example, if there are three theatres in a town, one a first run theatre, the other two second run theatres, and fifty pictures in a group are contracted for by the first run and the same number of the same pictures are contracted for by one of the second run theatres, the remaining second run theatre would not also contract for a second run of such pictures. Therefore if the second run exhibitor excludes ten per cent of the pictures he has contracted for and pays one-half of the rental price therefor, and the other second run exhibitor is willing to and contracts for the second run of the pictures excluded, one-half of the rental received from the latter second run [fol. 984] exhibitor up to the amount paid by the exhibitor first contracting for the second run must be credited as before stated.

Following is an example of relicensing a picture when no part of the amount received for such relicense would be credited to the exhibitor cancelling out or excluding the picture:

A distributor offers as a group at one time one-half of the distributor's output to Theatre A, and such offer is accepted. The distributor also licenses after offer as a group the remaining one-half to Theatre B (customarily playing

that part of the distributor's product not played by Theatre A). Each of these theatres would be entitled under the provisions of this article to cancel out ten per cent of the number which they contracted for as a group.

If Theatre A exercises such right and cancels out ten per cent of such number and such pictures are relicensed to Theatre B, Theatre A would not be entitled to a credit of the amount received on account of such relicense because if the cancelled pictures had not been originally contracted for by Theatre A they would have been offered and contracted for by Theatre B.

For the purpose of Article Twentieth it does not matter whether all the pictures of a group offered at one time are specified in one or more applications. The total number offered will be considered as an entire group.

The provisions of this article do not apply to short subjects or news reels nor do they apply to pictures released prior to the 1928-1929 season. In case an exhibitor agrees to contract for all of a distributor's 1927-28 product and all of the distributor's 1928-29 product offered as a group at one time the provisions of this article will apply only to the number of pictures in the group of 1928-29 product.

An example of computing the amount to be returned to the exhibitor if a relicense of a picture is made is as follows:

$100 is the original rental of the picture.

$50 is the amount the exhibitor must pay to the distributor when he cancels the picture, because he must pay one-half of the rental upon cancelling.

$70 is the rental obtained by the distributor for a relicense of the picture so cancelled.

$35 is the amount which the distributor must repay to the exhibitor in such a case because one-half of the amount so received for a relicense must be returned to the exhibitor.

Assuming the same facts as above but that,—

$120 is the amount received for a relicense by the distributor instead of $70 as in the case above.

$50 is the amount payable to the exhibitor because in no case is the distributor required to return to the exhibitor more than what the exhibitor paid.

An example of computing one-half of the license fee of a picture to be played on a percentage basis so that the amount the exhibitor must pay to the distributor when he cancels such a picture can be determined follows:

Assume that the rental of the picture is fifty per cent. of the gross receipts.

November 1 is availability date of the picture which the exhibitor cancels.

$70 is the average daily gross receipts for a period of 30 [fol. 985] operating days immediately prior to November 1. This is computed by adding the receipts for thirty operating days prior to November 1 and dividing by thirty.

$35 is therefore the amount that must be paid the distributor.

Article Twenty-first: If a picture because of racial or religious subject matter is offensive to the public in the place where an exhibitor's theatre is located and the exhibitor makes a claim to such effect within a reasonable time prior to the date fixed for the exhibiton of the picture, such claim must be immediately submitted to the Board of Arbitration, and if the Board of Arbitration determines that the exhibition of the picture will be offensive to the public in the place where the exhibitor's theatre is located, such picture will be excluded from the contract. If a picture is so excluded the distributor may exhibit or license its exhibition in another theatre in the same locality free of all claims of the exhibitor.

This article further provides that if in the opinion of the distributor any picture contracted for will be offensive to the public in the place where an exhibitor's theatre is located because of racial or religious subject matter, the distributor without submitting the question to arbitration may exclude the picture from the contract with such exhibitor, but only upon condition that the distributor shall not thereafter contract for its exhibition in such locality unless the racial or religious subject matter is eliminated. If such elimination is made then the distributor must furnish such picture to the exhibitor as first contracted for it.

Pictures excluded under Article Twenty-first do not reduce the total number of pictures the exhibitor may ex-

clude or cancel out under the provisions of Article Twentieth.

Article Twenty-second is the same as Article Twenty-second of the current contract, but revised in some respects.

The provision that delivery of a print or the furnishing of advertising accessories shall not be deemed an acceptance of the application is new. The time within which an application must be accepted has in the following cases been changed: Atlanta, Cincinnati, Memphis and Omaha, increased from 15 to 20 days; Dallas, reduced from 30 to 20 days; Pittsburgh and Washington, D. C., increased from 10 to 14 days; Salt Lake and Seattle, increased from 20 to 30 days.

A further new provision has been incorporated in this article to the effect that all applications signed at the same time by the exhibitor must all be accepted or all rejected or all deemed withdrawn. One or more of such applications may not be rejected and the others accepted. All must be either accepted or be deemed withdrawn, unless there is a provision written in the Schedule agreed to by the exhibitor evidenced by his signature permitting the acceptance or rejection of less than all such applications. The only case in which such an agreement is permitted to be set forth in the Schedule is in respect to pictures produced by a producer independent of the distributor whose contract with the distributor requires that such pictures be sold separately and apart from other pictures distributed by the distributor.

To the Direction to Salesmen, which is an expression of [fol. 986] the policy of all distributors and is recognized as a code of ethics in the industry, there has been added a sentence to the effect that a violation of such direction will subject the salesman to discharge.

Approved Additional Clauses

Any or all of the five following clauses may be added to a contract, but if added must appear in the Schedule:

The Cancellation Clause

This is the same as the Optional Cancellation Clause of the current contract. This clause needs no explanation. It is rarely used.

"Separate Applications" Clause

This clause may be used only upon the conditions stated in the note following it.

"Road-Show" Clause

The provisions of the road show clause give the distributor the right to road-show not to exceed two of the number of pictures contracted for before the exhibitor has the right to exhibit them. A picture will not be deemed to be a road-show picture unless it is shown at theatres at which not less than $1.00 admission is charged for a majority of the orchestra seats at evening performances.

If any picture is selected by the distributor for road-showing in a territory in which is located the exchange from which the exhibitor is served such picture is excluded from a contract and the distributor must give the exhibitor notice to such effect within fourteen days afer the road-showing in such territory commences. If a picture is not road-shown in an exhibitor's territory, but is road-shown in another territory, the distributor may not exclude such picture as a road-shown picture from the exhibitor's contract.

The foregoing conditions do not apply to pictures road-shown in New York City or the City of Los Angeles. In those cities the distributor may road-show as many pictures as the distributor selects to be road-shown, but of such pictures the distributor may not exclude from the contracts of exhibitors in the New York or Los Angeles territories more than two. In the New York City and Los Angeles territories, the distributor need not give notice of the exclusion of a picture road-shown there until eight weeks after the commencement of the road-showing.

Any picture in any territory excluded by the distributor as a road-show picture is excluded from the contracts of all exhibitors in such territory.

Any picture road-shown in any place in the United States which is not excluded by the distributor from the contract of any exhibitor by giving the notice above mentioned will not become available for exhibition anywhere in the United States to any exhibitor until after the completion of its road-showing in all territories which the distributor has selected it to be road-shown. After the completion of all such road-showings, a picture then will be available for exhibition to exhibitors having contracted for it.

For every picture excluded for road-showing by the distributor the exhibitor may exclude any other picture contracted for upon giving the distributor notice to such effect [fol. 987] not later than fourteen days before the date fixed for the exhibition of the picture which the exhibitor proposes to exclude. As to pictures which are excluded by either the distributor or the exhibitor, the distributor, of course, may relicense them when and where the distributor elects to do so.

Percentage Bookings Clause

This clause is based upon the provisions of Article Fifth of the current contract to which there have been added the following provisions (1) obligating the distributor to keep confidential any information obtained by the distributor as a result of the distributor's examination of the exhibitor's books and records and verification of the sale of tickets of admission, excepting if such information is necessary to the distributor in any arbitration of court proceedings, it may then be used and disclosed; (2) the provision obligating the distributor not to employ as its representative a resident of or a person regularly employed in the place where the exhibitor's theatre is located, unless the exhibitor consents to the employment of such resident or persons, or unless such representative is a regular employee of the distributor.

Following are two examples under this clause in respect to a contract which provides for a guarantee of $100.00 against 30% of the gross receipts, the picture to be played 3 days.

(1) If Exhibitor fails to play the picture at all, and his average gross receipts for the thirty operating days immediately prior to the first date set for exhibition of the pic-

ture are $150 daily, the distributor is entitled to $135 as liquidated damages, which is computed as follows:

Total average daily gross for 3 days, $450.00. 30% of $450.00 is $135.00.

(2) If the Exhibitor played the picture two days and failed or refused to exhibit it the third day, and his actual gross receipts on the second day were $120, the distributor is entitled to 30% of the actual gross receipts for the first and second day. For the third day the distributor is entitled to $27.00, computed as follows:

75% of $120 equals $90.00.
30% of $90.00 equals $27.00.

In this latter example the distributor is entitled to 30% of the actual receipts for the first and second days' exhibition, plus as liquidated damages $27.00 for the third day (*the day the picture was not exhibited*).

Rules of Arbitration

Rule I. The method of selecting exhibitor representatives and alternates on the Board of Arbitration has not been changed, excepting that in case the President of the Chamber of Commerce or the Mayor or other chief executive of a city fails to make such appointments they are to be made by the President of the American Arbitration Association instead of by the President of the Film Board of Trade.

All members of the Board of Arbitration are to serve one month instead of three months.

Rule II. Subdivision (4) has been added which provides for a chairman to be designated at each meeting of the Board of Arbitration from among the arbitrators, whose duty and authority as chairman is strictly limited to main-[fol. 988] taining order. The chairman is without right to pass upon the admission of evidence or to make any decision involving the exercise of judgment, without consultation with and the affirmative vote of all the other arbitrators. In other words the Board of Arbitration as such must in all such matters act unanimously or by majority vote of its members.

In the second line of paragraph 7 the word "unless" should be changed to "if." The use of the word "unless" was a typographical error.

Paragraph 8. The time within which a claim may be filed for arbitration has been reduced from one year to nine months after the date of a breach of a contract or of any act of ommission or commission out of which a dispute or controversy arose. This does not mean nine months from the date of the contract or the date of the playing of the first picture under the contract, but nine months from the date of the breach complained of.

Subdivision (c) of paragraph 9 is new and simply includes the new Standard Exhibition Contract among those that are subject to arbitration.

Rule III. Paragraph (2). The words "and of the time and place of hearing" have been added to provide that all notices of reference of claims to the Board of Arbitration shall set forth the time and the place of the hearing.

Paragraph (4) is new and is intended to afford an opportunity for an immediate hearing before the Board of Arbitration when in the opinion of the Board of Arbitration the facts of a case justify that prompt relief be given. If the Board of Arbitration so decides, twenty-four hours notice of the time and place of the hearing will be deemed sufficient.

Paragraph (7) is added so as to provide that in the case of an award made upon the default in appearance of either party, if an application is made to open such default within seven days, such default may be opened. In such case the Board of Arbitration in its discretion may fix such terms and conditions deemed just for opening the default. For example the Board may determine the award made by default shall stand until the both sides have been heard and the controversy determined upon such evidence.

Rule IV. Paragraph (4) is a new provision. If a claim is made by a distributor against an exhibitor or vice versa and the rights or liabilities of any other distributor or exhibitor are involved in such claim such other parties may be brought in as parties to the proceeding so that the rights and liabilities of all concerned may be determined in one proceeding. This new provision in effect is the same as paragraph (2) of Rule V heretofore discussed under Article Seventh of the contract, excepting that paragraph (2) of Rule V can be applied only in the case of an exhibitor making a claim against the distributor because of the fail-

ure or delay in delivering or forwarding the picture caused by a prior exhibitor whereas the scope of this paragraph (4) of Rule IV is broader. For example, under this paragraph if an exhibitor should claim before the Board of Arbitration the right to have a distributor and another exhibitor restrained from delivering and exhibiting respectively a picture in violation of a run or protection clause such exhibitor or the distributor may apply to the Board of Arbitration under this paragraph to have such other exhibitor brought in and made a party to the controversy. [fols. 989-991] In paragraph (6) there has been added a provision imposing a penalty of 10% of the amount of any award against the distributor for each thirty days after the time fixed for compliance that the distributor fails or refuses to comply with an award. This new provision was referred to above in connection with Article 18 of the new contract.

Rule V. The provisions of both paragraphs of this Rule are new. Paragraph (1) makes it mandatory upon the Board of Arbitration to award for each offense based upon claims of bicycling or switching not less than $250, nor more than $5000, the sums fixed in Section 25 of the United States Copyright Law. If, however, the Board of Arbitration shall affirmatively find that the bicycling or switching was not wilfully done by the exhibitor the award which the Board of Arbitration must make must not be less than $100. The question of whether or not the act of the exhibitor was wilful is one that must be determined by the Board of Arbitration and unless strong evidence of the absence of intent is presented to the Board, the Board must hold the act of the exhibitor to have been a wilful one.

Paragraph (2) has been fully discussed above in connection with Article Seventh of the Contract and paragraph (4) of Rule IV.

Rule VI is a revision of Rule V of the current Rules of Arbitration requiring that any amendment or repeal of any of the Rules of Arbitration shall not be made without first obtaining the approval of the Contract Committee.

Following is a summary of the principal new provisions of the new contract: